

United States  
Circuit Court of Appeals *6*  
For the Ninth Circuit.

S. C. ADAMS,

Appellant,

vs.

YUKON GOLD COMPANY, a Corporation, W. A.  
DIKEMAN, JOHN BEATON, THOMAS  
P. AITKEN, RAE B. CARTER, P. F.  
STIMLEY and TOM DAVIS,  
Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for  
the Territory of Alaska, Fourth Division.

FILED  
DEC 7 - 1917  
F. D. MONKTON,  
Clerk.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys of Record.**

E. COKE HILL, Attorney for Plaintiff and Appellant, Ruby, Alaska.

HENRY RODEN, Juneau, Alaska, and

JOHN L. McGINN, 76 Poplar Ave., San Mateo, California, Attorneys for Defendants and Appellees.

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*In the District Court for the District of Alaska,  
Fourth Division.*

No. 32—R.

S. C. ADAMS,

Plaintiff,

vs.

YUKON GOLD COMPANY, a Corporation, et al.,  
Defendants.

**Stipulation Re Printing of Record.**

It is hereby stipulated between the attorneys for the parties respectively that in printing the record in this cause for use in the Circuit Court of Appeals, all captions shall be omitted after the title of the cause has been printed and the words "Caption and Title" and the name of the paper or document shall be substituted therefor; also that indorsements and file-marks may be omitted and the word "indorsement" printed in lieu thereof on all papers except the bill of exceptions, the petition for appeal and allowance thereof and the assignment of errors, and the record in the appellate court.

Done at Ruby, Alaska, August 30th, 1917.

E. COKE HILL,  
Attorney for Plaintiff.

HENRY RODEN,  
Attorney for Defendants.

Filed in the District Court, Territory of Alaska,  
4th Div. Sep. 13, 1917. J. E. Clark, Clerk. By  
Grace Fisher, Deputy. [1\*]

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[Caption and Title.]

**Praeceptum for Transcript of Record.**

To the Clerk of the Above-entitled Court:

You will please prepare and certify a copy of the  
record in this action as follows:

1. The complaint.
2. The answer.
3. The reply.
4. Bill of exceptions containing the evidence.
5. Decision.
6. Plaintiff's proposed findings of fact.
7. Findings of fact and conclusions of law.
8. Decree.
9. All stipulations as to time for filing bill of exceptions.
10. Order granting time for filing bill of exceptions—1/407.
11. Defendants' proposed amendments to bill of exceptions.
12. Order upon hearing for settlement of bill of exceptions—1/503.

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\*Page-number appearing at foot of page of original certified Transcript of Record.

13. Notice of calling bill of exceptions up for settlement.
14. Order settling bill of exceptions.
15. Original map, being Defts. Ex. "A."
16. Petition for appeal, with allowance.
17. Assignment of errors.
18. Bond on appeal.
19. Citation.
20. Certificate to transcript.
21. Copy of following stipulation.

E. COKE HILL,  
Attorney for Plaintiff.

It is hereby stipulated between counsel for the parties that the above shall constitute the record in the above-entitled cause and contains all the papers, exhibits and other papers necessary for a hearing in the above-entitled cause.

Done August 31st, 1917.

E. COKE HILL,  
Attorney for Plaintiff.  
HENRY RODEN,  
Attorney for Defendant.

[Indorsement.] [2]

---

[Caption and Title.]

**Complaint.**

Comes now the plaintiff and for cause of action against the defendants alleges:

1.

That the defendant Yukon Gold Company is a corporation organized and existing under and by

virtue of the laws of the State of Maine, and doing business in Alaska.

## 2.

That by reason of good and subsisting locations thereof as placer mining ground plaintiff is the owner of and in possession of the following described real property situated in the District of Alaska, Otter Recording District, Fourth Judicial Division, to wit: That certain piece or parcel of land known as "Anaconda No. 2" and "Anaconda Fraction" situated on the left limit of Otter Creek, said Anaconda No. 2 being bounded as follows: Commencing at initial stake which is at the southeasterly corner of this claim and which is at the same place as stake No. 2 of the Prospector Association and the northeasterly corner of the Mohawk Association, which said place is a well-known spot marked with permanent stakes, and running thence in a northerly direction one hundred and twenty-five feet (125 ft.) to stake No. 2, and thence in a westerly direction five thousand two hundred and eighty feet (5,280 ft.) to stake No. 3, and thence in a southerly direction one hundred and twenty-five feet (125 ft.) to stake No. 4, and thence in an easterly direction five thousand, two hundred and eighty feet (5,280 ft.) to the place of beginning. Each of said corners are marked with large wooden stakes driven securely into the ground and marked with the name of the claim and number of the post.

The "Anaconda Fraction" commences at the same point and is entirely [3] included within the boundaries of the "Anaconda No. 2" claim, its first

line being only one hundred and twenty (120) feet along the first course of the "Anaconda No. 2" to a post, and its second course running thence in a westerly direction twenty-six hundred and forty feet (2,640 ft.) and thence in a southerly direction one hundred and twenty feet (120 ft.) to post No. 4, and thence along the last course of the "Anaconda No. 2" in an easterly direction twenty-six hundred and forty feet (2,640 ft.) to the place of beginning. All corners of the "Anaconda Fraction" are marked by substantial wooden posts firmly set in the ground and marked with the name of the claim and the number of the post.

## 3.

The defendants and each of them claim some interest in said real property adverse to this plaintiff, the exact nature of which interest is to this plaintiff unknown.

## 4.

That said whatever claim the said defendants or either of them have to said real property is not valid and is without foundation, and is inferior to the ownership of this plaintiff,

WHEREFORE, this plaintiff, prays:

1. That the defendants and each of them be required to come into court and set up their or his said claim;

2. That the possession of this plaintiff and the title of this plaintiff to said real property be quieted as against the defendants and each of them, and,

3. For plaintiff's costs and disbursements in this

suit, and for such other and further relief as to the Court may seem meet and equitable.

E. COKE HILL and  
ALFRED E. MALTBY,  
Attys. for Plaintiff. [4]

United States of America,  
District of Alaska,—ss.

S. C. Adams, being first duly sworn, says: I am the plaintiff above-named; I have read the foregoing complaint, know the contents thereof, and I believe it to be true.

S. C. ADAMS.

Subscribed and sworn to before me this 25th day of July, 1913.

[Seal]

ALFRED E. MALTBY,  
Notary Public for Alaska.

My commission expires April 18, 1914.

I, E. Coke Hill, do hereby certify that I am attorney for plaintiff in the action named in the annexed copy of complaint, that I prepared said copy, and it is a full, true and complete copy of the original complaint in said action.

E. COKE HILL.

[Indorsement.] [5]

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[Caption and Title.]

**Answer of Defendants Yukon Gold Company, a Corporation, W. A. Dikeman and John Beaton.**

Comes now the defendants Yukon Gold Company, a corporation, W. A. Dikeman, and John Beaton,



and answering plaintiff's complaint filed herein deny and allege as follows:

1. Answering paragraph 2 of said complaint these answering defendants deny that at the time of the commencement of this action plaintiff was the owner of or in possession of the real property described in his complaint, or any part thereof.

2. Answering paragraph 4 of said complaint these answering defendants deny their interest and claim to the property described in the complaint filed herein, is invalid, or that it is without foundation, or that it is inferior to the alleged ownership of said plaintiff.

For further answer and as an affirmative defense these answering defendants allege:

1. That ever since the 10th day of April, 1909, these defendants, together with their codefendants and their grantors, have been and now are the owners in fee, subject only to the paramount title of the United States, in the sole and exclusive possession and entitled to the sole and exclusive possession of that certain placer mining claim known and recorded as the "Prospector Association Claim," situate on the left limit of Otter Creek, Otter Precinct, Territory of Alaska.

2. That the said Prospector Association Claim within its exterior boundaries, contains that certain piece or parcel of land described in plaintiff's complaint as "Anaconda Fraction" and "Anaconda No. 2."

3. That plaintiff has no right, title, interest or

estate in or to said Prospector Association Claim or any part thereof. [6]

WHEREFORE defendants pray judgment that plaintiff is not entitled to the property described in his complaint or any part thereof; that he has no right, title, interest or estate therein or thereto; that these defendants are the owners, in possession and entitled to the possession of the premises described in their answer and that defendants recover their costs and disbursements herein.

HENRY RODEN,

Attorney for Defendants Yukon Gold Company, W.

A. Dikeman and John Beaton.

United States of America,

Territory of Alaska,—ss.

E. A. Austin, being first duly sworn, on his oath deposes and says: I am the agent of Yukon Gold Company, a corporation, one of the above-named defendants and the person designated by said corporation upon whom service of summons may be made; I have read the foregoing answer, know the contents thereof and that the same is true as I verily believe.

E. A. AUSTIN.

Subscribed and sworn to before me this 20 day of July, 1914.

[Seal]

HENRY RODEN,

Notary Public in and for the Territory of Alaska.

My commission expires March 23d, 1918.



Service of the above answer is hereby acknowledged this 21st day of July, 1914.

E. COKE HILL,  
Of Attys. for Plaintiff.

[Indorsement.] [7]

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[Caption and Title.]

**Reply.**

Comes now the plaintiff and replying to defendants' answer, denies and alleges as follows:

1.

Denies each and every allegation contained in paragraphs 1, 2, and 3 of defendants' "further answer" and "affirmative defense."

As a further and affirmative reply plaintiff alleges:

1.

That the boundaries of the "Prospector Association Claim," referred to in paragraphs 1 and 2 of said affirmative answer of the said defendants as marked upon the ground, contained and at the time of the commencement of this action still contained more than one hundred and sixty acres, to wit, one hundred and eighty-seven acres more or less, and that defendants, with full knowledge of said excess over and above one hundred and sixty acres, neglected and refused to cast off said excess and that as to said excess any claim that defendants may have had as to ground within said Prospector location was null and void, and that after waiting a reasonable time for defendants to cast off said excess,

plaintiff located fifteen acres, more or less, of the said excess in the locations alleged in plaintiff's complaint as placer mining claims.

As a second and further affirmative reply, plaintiff alleges:

1.

That the said "Prospector Association Claim" was fraudulently located by the original locators thereof, for the reason that there was an understanding and agreement between certain of the persons whose names were used as locators thereof, that in consideration for their being named as [8] locators in said claim they would deed to defendant John Beaton and defendant W. A. Dikeman an undivided one-half of each of their interests in said claim as shown by the said location notice, and that thereafter and in accordance with said agreement they did so deed their said undivided half interests to the said defendants W. A. Dikeman and John Beaton, whereby the said defendants W. A. Dikeman and John Beaton each received more than undivided one-eighth ( $\frac{1}{8}$ ) interest in said claim.

A. E. MALTBY and  
E. COKE HILL,  
Attorney for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

S. C. Adams, being first duly sworn, on oath says: I am the plaintiff above named, I have read the foregoing reply, know the contents thereof and the same is true as I verily believe.

S. C. ADAMS.

Subscribed and sworn to before me this 27th day of July, 1914.

[Seal]

M. L. PETERSON,  
Notary Public for Alaska.

My commission expires Aug. 17, 1914.

Service of above reply *in* hereby acknowledged.

HENRY RODEN,  
Atty. for Defts.

[Indorsement.] [9]

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[Caption and Title.]

### Opinion.

The trial of this action was begun at the special July, 1915, term of court at Iditarod on the — day of July, before the court, without a jury. Testimony was introduced by both the plaintiff and the defendants, and on the — day of July, upon stipulation of counsel, the trial was continued to the special June, 1915, term of court at Ruby adjourned to the — day of August, 1915. An order was duly entered transferring the cause to the Ruby calendar, and trial of the action having been completed on the 16th day of August, the Court reserved decision.

The plaintiff in his complaint alleges that by reason of good and subsisting locations thereof as placer mining ground, he is the owner of and in possession of the Anaconda Fraction Placer Mining Claim, 120 feet in width by 2,640 feet in length, and of the Anaconda Fraction Number Two Placer Mining Claim, 125 feet in width by 5,280 feet in

length; that said Anaconda Fraction Number Two Placer Mining Claim includes within its boundaries all of said Anaconda Fraction Placer Mining Claim.

Answering plaintiff's complaint, defendants deny plaintiff's ownership of the "Anaconda Fraction" and "Anaconda Fraction No. 2"; allege that all the ground embraced by said "Anaconda Fraction" and said "Anaconda Fraction No. 2" is within the boundaries of the Prospector Association Placer Mining Claim, of which the defendant Yukon Gold Company is the lessee in possession [10] and co-owner and that the other defendants are owners of undivided interests and lessors of the Yukon Gold Company.

In reply, plaintiff denies the affirmative defense of defendants; alleges the Prospector Association Placer Mining Claim to be greatly in excess of 160 acres; failure of defendants to cast off excess within reasonable time after notice; and that the said "Prospector" Association Claim was fraudulently located by the original locators thereof.

By plaintiff's testimony it is shown that prior to the 23d day of May, 1911, plaintiff knew that the boundaries of the "Prospector" included more than 160 acres; that he had discovered gold-bearing gravel within the boundaries of the "Anaconda Fraction," and that on the 23d day of May, 1911, he placed stakes at the corners of the "Anaconda Fraction," blazed trees along its boundaries; in due time posted a notice of location on the premises and filed a copy of the same for record with the recorder of the Otter Precinct; that said "Anaconda Fraction"

was 120 feet in width by 2,640 feet in length. That subsequently and during the year 1913 plaintiff placed stakes at the corners of and blazed trees along the boundaries of the "Anaconda Fraction No. 2," including all the ground embraced in the "Anaconda Fraction"; in due time posted notice of location and filed a copy of the same for record with the recorder of the Otter Mining District. That said "Anaconda Fraction No. 2" was 125 feet in width by 5,280 feet in length. Plaintiff further testified that the assessment work had been done for the years 1912, 1913 and 1914.

It is shown that the "Prospector Association Claim" was located in the year 1909 by eight persons, and by the location notice thereof was intended to be 1,320 feet in width by 5,280 feet in length and to contain 160 acres; that as originally [11] marked upon the ground it contained 187.03 acres and was therefore in excess by 27.03 acres.

As is generally the case, the boundaries of the "Prospector Association Claim," as marked upon the ground, did not meet at right angles. The south boundary was 5,528 feet in length, the north boundary was 5,955.9 feet in length; the east boundary was not in a straight line, and from the center stake to the south boundary corner is a distance of 687.5 feet, and to the north boundary corner is 716.8 feet, the center stake being westerly of a straight line connecting the S. E. corner and the N. E. corner of the claim; the west boundary was 1,535.2 feet in length. The southerly boundary was also the northerly boundary of the Mohawk Association Claim.

The survey does not show the Anaconda Fraction No. 2 exactly 125 feet in width by 5,280 feet in length. It is less than 5,280 feet in length, 130 feet in width on the easterly boundary, and 123 feet in width on its westerly boundary, and is in conflict with the "Prospector Association Claim," after casting off the excess of 27.03 acres on the westerly end, in the extent of 14.31 acres. The southerly boundary of the "Prospector Association Claim" is the southerly boundary of the "Anaconda Fraction No. 2."

The plaintiff Adams testified in substance that after having ascertained the Prospector Association Claim as stated to be in excess of 160 acres, he went to two of the co-owners of the claim and notified them of his intention to stake such excess; that they thereupon gave their consent to plaintiff to stake such excess from either end or side. It was shown that the remaining co-owners, some of whom were in the immediate vicinity, were not advised of the consent given by the two co-owners to Adams; that this act had by them neither been previously authorized nor subsequently ratified. Plaintiff contends that having entered under the permission thus extended, the remaining co-owners, being tenants in common, were bound by the act of their cotenants.

[12] I am satisfied that this contention cannot prevail.

Barson v. Mulligan, 16 L. R. A. (U. S.) 151.

O'Hanlon v. Ruby Gulch M. Co., 135 Pac. 913.

McKinley v. Peters, 3 Atl. 27.

Lindley on Mines, Vol. 3, 1950.



Town of Gold Hill v. Caledonia M. Company,  
14 Morrison M. R. 207.

Deep River Gold M. Co. v. Fox, 1 Morrison M.  
R. 301.

It is not charged that the original locators fraudulently included within the boundaries of the Prospector Association Claim an area greater than 160 acres. It must therefore be admitted that the location was made in good faith as to the area included.

“No entry for the purpose of location can be made on an existing mining claim which is excessive through honest mistake until notice of the excess has been given the locator and an opportunity afforded him to reduce his claim to legal size.”

Jones v. W. G. M. & T. Co., 177 Fed. 95, 29  
L. R. A. (U. S.) 392.

Nichols v. Lewis & Clark M. Co., 109 Pac. 846,  
28 L. R. A. (U. S.) 1029.

Divinvell v. Dyer, 7 L. R. A. (U. S.), note,  
page 850.

Zimmerman v. Funchion, 161 Fed. 859.

Waskey v. Hammer, 170 Fed. 31.

“A placer mining claim located in good faith is not wholly void because it exceeds 20 acres (an association placer claim 160 acres), but is void only as to the excess, which may be rejected from any portion the owner may select, and until he has been advised of the excess, and has had a reasonable time to make his selection, his possession extends to the entire claim, and another who goes upon it and makes a location

of any part is a trespasser, and his location a nullity and void for any purpose.”

*Jones v. W. G. M. & T. Co.*, 177 Fed. 95.

The plaintiff, it will be noted, claims the right to enter by virtue of permission extended to him by two of the co-owners to stake the excess from either side or end. Ordinarily one could not be heard to complain if having granted permission to stake [13] the excess the locator staked less than the excess. If the two co-owners were able to bind the other co-owners by such, permission the plaintiff, as in this case, would be required to stake such excess entirely on one side or on one end. This plaintiff fails to do. If he, by his staking, can give the original location another course, as he has attempted to do in this instance, then “to stake on either side or end” can be construed to mean a staking of excess in rectangular form anywhere in the original claim provided one boundary of the fractional location coincides with one boundary of the original location. One claiming the right to make entry of a placer mining claim the boundaries of which contain an area in excess of the amount allowed by law, under permission of the owners thereof to stake the excess, should first determine the amount of such excess and stake the same in such manner that the original location thus reduced in area will not contain an additional course.

One of the defendants herein, the Yukon Gold Company, after this action was instituted, in the winter of 1914 surveyed the Prospector Association Claim, cast off the excess of 27.03 acres at the lower



end, and established a new boundary accordingly.

Section 2331 of the Revised Statutes provides that claims upon unsurveyed public lands shall conform “as near as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys.”

Defendants' Exhibit “A” is a map showing the conflict area of the Prospector Association Claim with the “Anaconda Fraction” and the “Anaconda Fraction No. 2,” also the excess area cast off by establishing a new lower boundary for the Prospector Association Claim. It also shows that the Prospector Association Claim is bounded on the upper, or easterly, end by the “K. P. M.” claim, and on the southerly side by the “Mohawk Association Claim” and the “Lucky Fraction Claim.” No claim is shown to join the [14] Prospector Association Claim on the westerly, or lower end.

If the decision of the Land Office is to be followed in *Re Snowflake*, 37 L. D. 250, “as near as practicable” has a well defined meaning. It is laid down in this decision that the Land Department is unwilling to approve “shoe string” claims or those of irregular shapes unless prior locations render such fractional locations necessary in order to appropriate unclaimed areas.

Plaintiff asks the Court to validate the “Anaconda No. 2,” being a fractional claim, 5,280 feet in length by 125 feet in width. The necessity for making a location in this form is not shown; on the other hand the evidence clearly shows that the plaintiff under section 2331 Revised Statutes could have

located the excess of the Prospector Association Claim finally cast off, and such location would have been "as near as practicable with the United States system of public land surveys."

Lindley on Mines, 3d Edition, vol. 2, sec. 448.

While the Courts are not bound by the decisions of the Land Department, still the Courts should consider them and give them full force and effect in proper cases.

Hanson vs. Craig, 170 Fed. 62.

Findings of fact and conclusions of law in accordance with the views herein expressed, together with a decree dismissing the action, may be prepared and submitted. Since defendants reside at Iditarod and the plaintiff resides at Ruby, the defendants may have sixty days to prepare, serve and file their findings of fact and conclusions of law, and the plaintiff may have sixty days after service of the same to prepare and file any proposed amendments or objections.

Dated Fairbanks, Alaska, November 9th, 1915.

CHARLES E. BUNNELL,  
District Judge. [15]

[Indorsement.] [16]

---

[Caption and Title.]

**Plaintiff's Proposed Findings of Fact and  
Conclusions of Law.**

The above-entitled cause having come regularly on for trial, the plaintiff appearing in person and by his attorney, E. Coke Hill, and the defendants ap-

pearing by their attorneys Henry Roden and E. M. Stanton, and testimony having been introduced on the part of plaintiff and defendants, and the Court being fully advised, it makes the following findings of fact:

1. That on or about the 8th day of June, 1909, J. Morrow, Ira Van Orsdale, Wm. Stemley, C. C. Chitic, Tom Davis, Jim Muckler, Wm. Pillar and L. Blackburn, located that certain placer mining claim, situated Otter Creek, Otter Recording Precinct, Territory of Alaska, and known as the Prospector Association, by making a discovery of gold within its boundaries, marking its boundaries so they could be readily traced upon the ground and posting and recording a location notice.

2. That in their said location notice the said locators of the said Prospector Association described said association as containing one hundred and sixty acres and being five thousand two hundred and eighty feet long by thirteen hundred and twenty feet wide.

3. That the area contained within the boundaries of said claim as marked upon the ground contained in fact one hundred and eighty-seven (187) acres. That the initial post of said Prospector claim was placed by the locators thereof on the western end of said claim and that end line was approximately as much longer than the call for the width of the claim as the width of [17] Anaconda Fraction hereinafter referred to. That Prospector claim extended, as originally staked, a little over a mile from the western end to the eastern end and

that the eastern end of said claim was on a rocky hillside upon which no gold has ever been found. That the western end of said claim covers the alluvial plain of Flat and Otter Creeks.

4. That in April, 1911, S. C. Adams, the plaintiff in this action, had measured the Prospector Association and found it excessive, and on or about the first of April, 1911, he told Jim Muckler and C. C. Chittic that the Prospector claim was in excess of 160 acres and asked if they had any objection to his staking the excess and was told by them that if it was excessive he could stake the excess off whatever side or end he wished. That at the time of said conversation both Muckler and Chittic were owners of an undivided interest in said Prospector Association, and Chittic was in possession thereof under lease.

5. That hereafter and on or about the 23d day of May, 1911, the plaintiff herein and one Wm. Lang went upon the northern end of the Prospector Association and discovered gold within the boundaries of the Anaconda Fraction, and marked the boundaries of the said Anaconda Fraction so the same could be readily traced upon the ground and posted notice of location thereof and caused said notice of location to be recorded in the office of the recorder of the recording precinct wherein the ground included in the Anaconda Fraction was situated. That the said Anaconda Fraction was marked upon the ground was 120 feet wide and extended 2,640 feet along and within the northern boundary of said Prospector Association.

6. That between the time when plaintiff measured the Prospector Association and at the time when he staked the Anaconda Fraction, some of the owners of the Prospector were not in the vicinity of the Prospector and plaintiff did not give actual notice [18] of his location of the Anaconda Fraction to any of said owners except Muckler and Chittic, and since said location of the Anaconda Fraction in May, 1911, some of the owners of said Prospector Association have never resided in the vicinity of of said Prospector Association.

7. That after the location of the Anaconda Fraction plaintiff by mesne conveyance acquired the interest of Wm. Lang therein.

8. That plaintiff performed \$100.00 worth of work within the boundaries of Anaconda Fraction during each of the years 1912, and 1913 and maintained his boundary markings.

9. That at the time of the commencement of this action the defendant Yukon Gold Company, by a series of mesne conveyances had acquired the titles of C. C. Chittic, S. Blackburn, J. Morrow, and half of the original interest of Van Orsdale and William Pillar, and that all of said interests save the half interest of Van Orsdale were acquired prior to the location of Anaconda No. 2 hereinafter referred to. That prior to the commencement of this action and prior to the location of said Anaconda No. 2, defendant W. A. Dikeman had acquired one-half of the original interests of J. Morrow, Ira Van Orsdale and P. F. Stimley by mesne conveyances from them, and defendant John Beaton had acquired by mesne



conveyances one-half of the original interests of James Muckler, Wm. Pillar and Tom Davis in said Prospector Association; Rae B. Carter had acquired by mesne conveyance from James Muckler, one-half of his original interest and Tom Davis still retained one-half of his original interest therein.

10. That, during the month of December, 1912, the defendant Yukon Gold Company served notice upon the plaintiff who was then working on the Anaconda Fraction to forbear and refrain from trespassing upon the Prospector Association. [19]

11. That during the month of August, 1912, plaintiff and the manager of the defendant Yukon Gold Company had a conversation at which plaintiff attempted to sell to Yukon Gold Company the Anaconda Fraction and pointed out to said manager on a map showing the Prospector and Mohawk claims, the location of Anaconda Fraction.

12. That on the 19th day of July, 1913, plaintiff went upon the Prospector Association and marked the boundaries of a placer mining claim by him designated as "Anaconda No. 2." That he marked said boundaries so the same could be readily traced upon the ground, made a discovery of gold therein and posted a location notice and caused a copy thereof to be recorded in the recording office for the recording precinct in which said ground was located. That the said Anaconda No. 2 was located over and included within its boundaries the Anaconda Fraction, and lay along the northern end of the Prospector Association and within its boundaries and is 125 feet north and south and 5,280 feet east and west.

13. That at the time of the location of Anaconda Fraction and Anaconda No. 2, the Prospector claim was a valid subsisting placer mining location, and said Anaconda Fraction and Anaconda No. 2 were made as locations of a portion of the excess area of said Prospector Association.

14. That at the time of the commencement of this action the plaintiff herein was in the actual possession of the ground covered by the Anaconda Fraction and Anaconda No. 2 locations, and defendants were asserting title to and claiming an interest in said ground adverse to this plaintiff.

15. That defendants did not cast off any of the excess contained in said Prospector location as originally marked upon the ground until after the commencement of this action. [20]

16. That the Prospector Association, as originally marked upon the ground adjoined the Mohawk Association along the northern end line of the Prospector Association, and said Mohawk Association was at the time of the location of Anaconda Fraction and Anaconda No. 2 a valid and subsisting mining location.

Done this — day of August, 1916, at Ruby, Alaska, in open court.

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District Judge.

### CONCLUSIONS OF LAW.

From the foregoing *conclusions* of fact the Court finds as a conclusion of law that the plaintiff made a good and valid location of "Anaconda Fraction" and "Anaconda No. 2" as placer mining claims and

is entitled to a decree quieting his title thereto.

Done this — day of August, 1916, at Ruby, Alaska, in open court.

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District Judge.

Service of the above proposed findings and conclusions at Ruby, Alaska, by receipt of copy is hereby acknowledged this 11th day of August, 1916.

HENRY RODEN,

Attorney for Answering Defendants.

[Indorsement.] [21]

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[Caption and Title.]

**Findings of Fact and Conclusions of Law.**

This cause having come regularly on for trial, the plaintiff appearing in person and by his attorney, E. Coke Hill, Esq., and defendants Yukon Gold Company, W. A. Dikeman, and John Beaton appearing by their attorneys Henry Roden and E. M. Stanton, and testimony having been introduced on the part of plaintiff and defendant, and the Court being fully advised and having heretofore rendered its decision in writing, now makes the following findings of fact:

1st. That on or about the 8th day of June, 1909, J. Morrow, Ira Van Orsdale, Wm. Stemley, C. C. Chittie, Tom Davis, Jim Uckler, Wm. Pullar and L. Blackburn located that certain placer mining claim designated in the pleadings herein as the "Prospector Association Claim" situate on Otter Creek, Otter Precinct, Territory of Alaska, by marking the boundaries thereof so that the same could be readily



traced, by making a discovery of gold within the exterior boundaries of said claim, by posting notice of location upon the said premises and by causing said notice of location to be recorded in the office of the recorder of the mining precinct within which said premises were situate.

2d. That in their said location notice the said locators of said Prospector Association Claim claimed a piece or parcel of land 5,280 feet long by 1,320 feet wide, making a total area of one hundred and sixty (160) acres.

3d. That the area contained within the said boundaries of said Prospector Association Claim as marked upon the ground, contained in fact more than one hundred and sixty acres, to wit, one hundred and eighty-seven acres.

That the boundaries of the said Prospector Association Claim as marked upon the ground did not meet at right angles; that the south boundary was 5,528 feet in length; the north boundary was 5,955.9 feet in length; the east boundary was not in a straight line, and from the center stake to the south boundary [22] corner is a distance of 687.5 feet and to the north boundary corner is 716.8 feet, the center stake of said claim being westerly of a straight line connecting the S. E. corner and the N. E. corner of the claim; the west boundary was 1,635.2 feet in length. The southerly boundary was also the northerly boundary of the Mohawk Association Claim.

4th. That in April, 1911, plaintiff Adams measured the said Prospector Association Claim and found the same to be in excess of 160 acres; that there-

after said plaintiff went to Jim Muckler and C. C. Chittic, two of the co-owners of the said Prospector Association Claim and notified them of his intention to stake such excess; that the said two co-owners informed said plaintiff that if the said Prospector Association Claim contained an excessive area to stake such excess from either end or side of said claim. That some of the co-owners in said Prospector Claim were well known in the vicinity where said premises are situate and were living in close proximity thereto; that said co-owners were not notified by anyone nor were they advised of the fact that said claim contained an excessive area; they were never informed or advised of the instructions or directions given by their said two co-owners Muckler and Chittic to plaintiff to take up such excess at either end or side of said claim, and their said act had been by them neither previously authorized nor subsequently ratified. That some of the co-owners in said Prospector Claim resided at a distance therefrom and they were never aware of the fact that said claim contained in excess of 160 acres and they were never advised or informed of the directions given by said Muckler and Chittic to locate such excess at either end or side of this act had been by them neither previously authorized nor subsequently ratified.

5th. That the excessive area contained in said Prospector Association Claim was taken in through the honest mistake of and without any intention on the part of said locators or any of them, to acquire by said location a placer mining claim in excess of 160 acres or an interest in such placer mining claim, ex-

ceeding twenty acres for each single locator.

6th. That on the 23d day of May, 1911, while said Prospector Association Claim was a valid, subsisting mining location, and while the locators [23] thereof and their grantees had no notice or knowledge that said placer claim contained an area in excess of 160 acres, except the said locators Muckler and Chittie, and without the knowledge or consent of said locators except as to said Muckler and Chittie, plaintiff herein, entered within the exterior boundaries of said Prospector Association Claim and pretended to make a placer location within the boundaries thereof and called the same "Anaconda Fraction." That said fraction, as claimed in the notice of location, was 120 feet in width, by 2,640 feet in length; that as marked upon the ground the said Anaconda Fraction lies wholly within the exterior boundaries of the said Prospector Association Claim and *noe* of its boundaries cover or adjoin any boundary line of said Prospector Association Claim, and the said Anaconda Fraction is not located either at one end or one side of said Prospector Claim. That the boundaries of said Anaconda Fraction were marked upon the ground so that the same can be readily traced and a discovery of gold was made within the same by said plaintiff and his colocator Lang, and notice of location thereof was duly recorded in the office of the recorder for Otter Precinct, that being the Precinct within which said premises are situate.

7th. That on the 19th day of July, 1913, and while the said Prospector Association Claim was a valid subsisting placer mining claim, and while the

locators thereof and their grantees, except the said locators Muckler and Chittie, had no notice or knowledge of the fact that said Prospector Claim contained an area in excess of 160 acres plaintiff herein entered within the exterior boundaries of said Prospector Association Claim and pretended to make a placer mining location within said lines, and called the same "Anaconda Fraction Number Two." That plaintiff marked the boundaries thereof so that the same could be readily traced, made a discovery of gold within said boundaries and caused the notice of location thereof to be recorded in the office of the recorder within whose precinct said premises are situate. That in his notice of location, plaintiff claims a piece or parcel of land 125 feet in width by 5,280 feet in length. As marked upon the ground said Anaconda Fraction Number Two is 5,374 feet in length [24] 130 feet in width at the easterly boundary and 125 feet in width on its westerly boundary, and lies wholly within the exterior boundary lines of said Prospector Association Claim. That the southerly boundary line of said Anaconda Fraction Number Two is not coextensive with the southerly boundary line of said Prospector Claim and the westerly end line of said Anaconda Fraction Number Two is 254 feet easterly from the easterly end line of said Prospector Claim. Said Anaconda Fraction Number Two embraced all of said Anaconda Fraction and is in conflict with said Prospector Claim, after casting off the excess on the westerly end, in the extent of 14.31 acres.

8th. That said plaintiff, in making the said two locations, did not stake or locate them, or either of

them, on either end or side of said Prospector Claim, as he was requested to do by said Muckler and Chittie.

9th. That at the time of the location of said Anaconda Fraction and said Anaconda Number Two, said Prospector Association was a valid subsisting mining location and said pretended locations were intended to take up a portion of the excess area contained in said Prospector Claim.

10th. That it was practicable for plaintiff to locate and stake the excess area contained within the boundaries of said Prospector Claim in a more compact form than the form given said Anaconda Fraction and said Anaconda Fraction Number Two, and the configuration of the land embraced within the exterior boundaries of said Prospector Association Claim did not make it impracticable to locate such excess in a more compact form than was done in the pretended locations of said two Anaconda Fractions.

11th. That at the time of the commencement of this action plaintiff was in possession of said Anaconda Fraction and said Anaconda Fraction Number Two.

12th. That at the time of the commencement of this action defendant Yukon Gold Company had acquired the titles of C. C. Chittie, S. Blackburn, J. Morrow and one-half of the interest of Van Orsdale and Wm. Pillar. [25] Defendant Dikeman had acquired one-half of the interest of J. Morrow, Van Orsdale and P. F. Stemley, and defendant Beaton had acquired one-half of the interest of Jim Muckler, Wm. Pillar and Tom Davis.



13th. That the locators and their grantees of said Prospector Association Claim, except said Muckler and Chittie, did not acquire notice of the fact that said claim contained an area in excess of 160 acres until after the commencement of this action; that thereafter they caused said Prospector Association Claim to be surveyed and upon ascertaining that said claim contained in excess of one hundred and sixty acres, made an amended location thereof by casting off such excess at the westerly end of said claim and by drawing in their lines and stakes, so that the area contained within the boundaries of said Prospector Association Claim as amended contained 160 acres and no more, and caused an amended location notice to be posted upon said premises, and caused said amended location notice to be recorded in the office of the recorder in whose precinct said premises are situate.

And from the foregoing findings of fact the Court makes the following conclusions of law.

1st. That at the time plaintiff entered within the exterior boundary lines of said Prospector Association Claim and pretended to locate said Anaconda Fraction and also at the time said plaintiff entered within said boundary lines and pretended to locate said Anaconda Fraction Number Two, said Prospector Association Claim was a valid, subsisting mining location, and plaintiff's entry thereon and making said pretended mining locations gave him no right, title, interest or estate in or to any part of the area contained within the said boundaries of said Prospector Association Claim, and the pretended loca-

tions of said Anaconda Fraction and said Anaconda Fraction Number Two were and are null and void.

2d. That at the time of the commencement of this action defendants herein were, and they now are, the owners in fee of the premises described in their answer, to wit: The Prospector Association Claim, situate on Flat Creek, Otter Precinct, Alaska, as originally staked and located by them [26] less the excess area contained within the original boundary lines of said Prospector Association Claim, and as said Prospector Claim is now marked upon the ground and described in the amended location notice thereof; and the defendants then had, they now have, and they were then and they now are, entitled to the sole and exclusive possession of the said premises; that the plaintiff had not at the time of the commencement of this action and had not now any right, title, interest or estate therein, or in or to any part thereof, nor the right to the possession thereof, or to any part thereof.

3d. That the defendants Yukon Gold Company, W. A. Dikeman and John Beaton are entitled to the relief prayed for in their answer, filed in this cause.

Done at Ruby, Alaska, this 16th day of August, 1916.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 1, page 401.

[Indorsement.] [27]

[Caption and Title.]

**Decree.**

Be it remembered that upon this 16th day of August, 1916, this cause came on for hearing upon the motion of defendants for judgment and decree; and the Court, having heretofore tried this cause and made and filed its decision herein in favor of the said defendant and having heretofore made and filed its findings of fact and conclusions of law;

IT IS NOW ORDERED, ADJUDGED AND DECREED that plaintiff is not the owner, nor entitled to the possession of the property described in his complaint herein as Anaconda Fraction Placer Mining Claim and Anaconda Fraction Number Two Placer Mining Claim, situate at the mouth of Flat Creek, Otter Precinct, Territory of Alaska, nor of any part thereof; and has no right, title nor interest therein, and was not such owner and had no right, title nor interest in said property, or any part thereof, at the time of the commencement of this action; that at the time of commencement of this action the defendants herein were the owners in fee of the Prospector Association Claim, situate on said Flat Creek in said Otter Precinct, Alaska, within the exterior boundaries of which said Anaconda Fraction Mining Claim and said Anaconda Fraction Number Two Mining Claim are situate, and have their right to and were entitled to the sole and exclusive possession of said above-described premises and the whole thereof.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff take nothing by this



action, and that said plaintiff's cause be, and the same hereby is dismissed and that the defendants Yukon Gold Company, W. A. Dikeman and John Beaton recover their costs and disbursements, taxed at \$——— herein expended.

Dated at Ruby, Alaska, this 16th day of August, 1916.

CHARLES E. BUNNELL,

District Judge. [28]

Entered in Court Journal No. 1, page 406.—  
RUBY.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Aug. 16, 1916. J. E. Clark, Clerk. By Thos. J. De Vane, Deputy. [29]

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[Caption and Title.]

**Bill of Exceptions.**

The above-entitled cause being at issue came regularly on for trial on the 13th day of July, 1913, at Iditarod, Alaska, before Honorable CHARLES E. BUNNELL, District Judge, there being then and there present E. Coke Hill, attorney for plaintiff, and Henry Roden and E. M. Stanton, attorneys for defendants.

S. C. Adams, the plaintiff, being first duly sworn, testified as follows: [30]

**Testimony of S. C. Adams, in His Own Behalf.**

S. C. ADAMS, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

**Direct Examination.**

(By Mr. HILL.)

Q. What is your name?      A. S. C. Adams.

Q. How old are you?      A. Thirty-nine.

Q. How long have you been in Alaska?

A. Since 1907.

Q. In what capacity did you come to Alaska?

A. As manager of the Alaska Mercantile Company.

Q. Where?      A. At Nome, Alaska.

Q. Was that the Ames Company?

A. Rosena had taken over the Ames Company, and I went up there to take it over and adjust it.

Q. How long did you remain in Alaska with Mr. Rosena?      A. About fifteen months.

Q. Did you do any mining in the Nome country?

A. Yes, sir.

Q. When did you come here?

A. I came here in December, 1910—the latter part of December.

Q. Where did you mine in the Nome country?

A. On Flat Creek, back of—known as the Senate Creek District. I had a lay on a piece of ground there.

Q. Where did you live after you came here?

A. I lived out at Flat Creek.

Q. In the town of Flat?

(Testimony of S. C. Adams.)

A. In the town of Flat. Yes, sir. [31]

Q. Do you know where the Prospector Association was situated at that time? A. Yes, sir.

Q. Did you ever locate any portion of the Prospector? A. I did.

Q. When did you first make up your mind to locate a portion of the Prospector?

A. It was some time in the latter part of March or first of April in 1911.

Q. What, if anything, did you do when you made up your mind to locate that portion of the Prospector?

A. I had learned that Mr. Cash Chittie and Jim Muckler had an interest in the Prospector. And one afternoon in Conley's Saloon, in the presence of William Lang, Star Ballard and Charley Krutzinger, Mr. Cash Chittie and Mr. Jim Muckler were in the office and I told them that I wished to stake a fraction off the Prospector, as I considered it too large, and they informed me that if it was too large,—in excess of 1,320 feet by 5,280 feet,—that I could stake a fraction at either side or end that I wished.

Q. Let me get that right. What did they say to you?

A. They said that I could stake a fraction at either side or end.

Q. Not that. What I meant—something about “too large.”

A. If it was in excess—(interrupted).

Q. I didn't understand that.

A. (Continuing.) —of 1,320 feet by 5,280, or 160

(Testimony of S. C. Adams.)

acres, as all they claimed was 160 acres.

Q. Who told you that?

A. Mr. Chitic and Mr. Muckler. [32]

Q. How did Chitic and Muckler come to tell you that?

A. Mr. Chitic had been prospecting there, and Mr. Muckler lived up around Otter, and I told them the claim was too big, and they said if it was too big I could stake that fraction.

Q. What relation did they have to the claim?

A. They claimed they had an interest in the Prospector, and Mr. Chitic I believe at that time had a lay.

Q. What did you do then?

A. Along in May, I believe it was the 22d of May, I measured the Prospector, William Lang and I. We hired a man by the name of Puntila to help us measure the Prospector.

Q. What did you do then?

A. We measured it and found it too wide, and made a discovery on the 22d—I believe it was the 22d—and on the 23d—(interrupted).

The COURT.—22d of what?

A. —of May, 1911. On the 23d of May we staked it—staked the Anaconda, 120 feet wide by 2,640 feet long.

Q. Did you say you staked the claim 2,120 feet wide?

A. 120 feet wide from the initial stake.

Q. I understood you to say 2,120.

A. And 2,640 feet long along the side joining the Mohawk line.

(Testimony of S. C. Adams.)

Mr. HILL.—Q. Where did you say you made the discovery that you say you made on the 22d?

A. In Flat Creek. Right in the creek.

Q. Where was that place in the creek with relation to the boundaries of this fraction?

A. That was within the 120 feet, and below—north of the boundary of the Mohawk. [33]

Q. When you staked that fraction, what stakes, if any, did you see?

A. I found the northeast corner stake of the Prospector, which I took for the initial stake, and I found the southeast—or the southwest—or the northwest corner stake, and then the southwest corner stake and the southeast corner stake adjoining the Mohawk. The four stakes were all I could find on the claim.

Q. Where was the initial stake of the fraction? (Interrupted.)

A. The initial stake—(interrupted.)

Q. Wait a minute until I finish—with relation to what you took to be the initial stake of the Prospector?

A. From the initial stake of the Prospector I measured over to the initial stake of the Mohawk, which was 1,445 feet. That would be the southeast corner stake of the Prospector also. Then I placed my initial stake there and measured 120 feet in a northerly direction—(interrupted).

Q. Just a minute. You say, “In a northerly direction.” Was that back towards this initial stake?

A. Back towards the initial stake.

(Testimony of S. C. Adams.)

Q. Why did you only measure 120 feet?

A. Well, I thought by taking just a strip along there, what pay was on Flat there, I could cover it in 120 feet. And I had been told by Chitic and Muckler that I could stake at either side or end that I wished and leave them their ground intact of 160 acres, or 1,320 feet by 5,280 feet. I thought that was about all I could take.

Q. What ground was directly south of your fraction that you staked?

A. The Mohawk is directly south. [34]

Q. When you say "the Mohawk," what do you mean?

A. I mean the Mohawk Association.

Q. Is that a placer mining claim?

A. A placer mining claim.

Q. And what did you do after you set this second stake in the way you have indicated?

A. After setting the second stake 120 feet in a northerly direction, I blazed a line and measured down 2,640 feet and placed my stake number 3, and measured back to the Mohawk line 120 feet and placed my stake number 4 and blazed the line.

Q. What did you do after that?

A. Then I came back to the initial stake. There was a line blazed through there of the Mohawk.

Q. When you say you made a discovery on this ground, what do you mean by "discovery"?

A. A discovery of gold in paying quantities, which would pay. I had been panning on Flat Creek before, on the Mohawk, as early as between Christmas



(Testimony of S. C. Adams.)

and New Years of 1910. And that Spring at different times I had panned in the Mohawk in the creek and had found gold that would pay to work.

Q. Did you do any work on that claim in 1912?

A. Yes, sir.

Q. I mean on your claim.

A. On the Anaconda; yes, sir.

Q. What did you do in 1912?

A. William Lang and I in 1912 sunk a *hold* and put some drifts in in 1912.

Q. What was the value of that work in 1912?

A. It was over \$100.00 worth of work. [35]

Q. Did you do any work there in 1913?

A. Yes, sir. In 1913 I gave a lay on the ground and sunk a hole 27 feet deep to bedrock.

Q. Did you sink that hole yourself?

A. I helped sink the hole. Yes, sir.

Q. Did you do any work in 1914?

A. In 1914 I did.

Q. What did you do in 1914.

A. In 1914 I sunk, I believe it was, five holes and cleared timber on the upper end. And also in 1913 I rocked all the gravel out of that hole that we sunk in January.

Q. What was the result of your rocking?

A. I found some gold.

Q. Did you ever talk with any of the other owners besides Cash Chitic and Jim Muckler?

A. At one time along about August, 1912, I spoke to Mr. Marston, and I understood he had acquired an interest in the Prospector. Some question came



(Testimony of S. C. Adams.)

up in the Grand Hotel, and he said that he didn't know there was a fraction there as the ground had never been surveyed. And along in August, 1912, I had a conversation with Mr. Austin in his office on Flat Creek opposite the Conlin Saloon in reference to the different interests I had on Flat Creek.

Q. Who is Mr. Austin?

A. Mr. Austin is manager of the Yukon Gold Company.

Q. Did you ever talk with any of the other owners?

A. I talked with Mr. Riley at one time. I was going to give Mr. Riley an option on what property I had there. I talked with him.

Q. Was Mr. Riley an owner?

A. I believe he is an owner by buying. Yes, sir.  
[36]

Thereupon plaintiff offered in evidence, placer location notice of the Anaconda Fraction, which was admitted without objection, marked Exhibit 1, and is as follows:

**Plaintiff's Exhibit 1—Placer Location Notice.**

We, the undersigned, citizens of the United States, have discovered placer gold in the ground herein-after described, and hereby claim for placer mining purposes 15 more or less acres, situated on Flat Creek, a tributary of Otter Creek, in the Otter Recording Mining District, District of Alaska, to be known as Anaconda Fraction and described as follows:

Commencing at the Initial Stake, which is Stake No. 1, on the Southeasterly corner of said claim, and

is situated, tied and joining the southeasterly corner stake No. 2—Prospector Assn. and N. E. corner and Initial Stake No. 1 of Mohawk Assn.

Thence 120 feet in a northerly direction to Stake No. 2, N. E. corner;

Thence 2640 feet in a westerly direction to Stake No. 3, N. W. corner;

Thence 120 feet in a southerly direction to Stake No. 4, S. W. corner;

Thence 2640 feet in a easterly direction to the place of beginning, the Initial Stake, upon which is posted a copy of this notice.

This location is made this 23d day of May, 1911.

Witness:

S. C. ADAMS, Locator.

WAINO PUNTILA.

WM. LANG.

Endorsed: Filed for record at request of S. C. Adams on the 25th day of May, 1911, at 9 A. M. and Recorded in Vol. One of Locations, page 555, Otter Recording District.

ALFRED E. MALTBY,

Recorder.

By C. J. MALTBY.

Thereupon plaintiff offered in evidence deed from William Lang to S. C. Adams, which was admitted without objection, marked Exhibit 2, and is as follows:

**Plaintiff's Exhibit 2—Deed, William Lang to S. C. Adams.**

THIS DEED made this 14th day of September, 1912, at Iditarod, Alaska, between Wm. Lang, grantor, and S. C. Adams, grantee, WITNESSETH:

In consideration of the sum of fifteen hundred dollars (\$1500.00) lawful money of the United States to grantor in hand paid by grantee, the receipt whereof is hereby acknowledged, grantor does hereby grant, bargain and sell to grantee, his heirs and assigns forever, all of the right, title and interest of the grantor in and to the following described placer mining claims situated in the District of Alaska, Otter Recording District, to wit:

That placer mining claim known as the "Anaconda Fraction" containing fifteen (15) acres more or less, location notice of which is of record in Vol. 1 of locations, page 555, records of Otter Recording District; and also,

That placer mining claim known as "North Butte Association" containing one hundred and sixty (160) acres more or less, location notice of which is of record in Vol. 1 of locations, page 556, records of Otter Recording District.

Grantor claims to have a quarter in the Anaconda claim and an eighth in the North Butte, and this deed is intended to convey said quarter and eighth and in addition any other interest grantor may have therein.

To HAVE and to HOLD unto the said grantee his heirs and assigns forever, together with all and singular the tenements, hereditaments and appur-

tenances thereunto belonging or in anywise appertaining.

WITNESS the signature of the grantor this 14th day of September, 1912, at Iditarod, Alaska.

WM. LANGE.

In the presence of

E. COKE HILL,

ALFRED E. MALTBY. [37]

United States of America,

District of Alaska,—ss.

This certifies that on this 14th day of September, 1912, at Iditarod, Alaska, Wm. Lang, to me known to be the individual who executed the above deed, personally appeared before me and in person acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my official seal and signature the day and year in this certificate first above written.

[Seal]

ALFRED E. MALTBY.

Endorsed: Filed for record at the request of S. C. Adams on the 16th day of September, 1912, at 50 min. past 12, and recorded in Vol. 3 of Deeds, page 158, Otter Recording District.

GEORGE W. ALBRECHT,

Recorder.

Thereupon the plaintiff offered in evidence a notice purported to be signed by the Yukon Gold Company which was admitted without objection, marked Exhibit 3, and is as follows:

**Plaintiff's Exhibit 3—Letter, Dated January 13,  
1913, The Yukon Gold Company to S. C. Adams.**

Flat Creek, Alaska, January 13, 1913.

Mr. S. C. Adams,

Flat City.

Dear Sir:

You are hereby notified that notices, of which the enclosed are copies, have been posted on the Mohawk and Prospector Association claims, and unless you immediately desist from trespassing thereon, and depart and remain away therefrom you will be prosecuted for trespass in the manner provided by law.

Very respectfully,

**THE YUKON GOLD COMPANY.**

By J. RIVERS. [38]

Q. I will show you Plaintiff's Exhibit 3 and ask you if you ever saw that before.

A. Yes, I did.

Q. Where and when?

A. I believe it was January 13th or 14th. I believe it was Mr. Rivers or Kettlewell handed it to me. I would not say which one did. It was when I had a boiler and windlass and was working on the Anaconda Fraction.

Q. Were you on any other part of the Prospector at that time? A. No, sir. [39]

Thereupon the plaintiff offered in evidence, placer location notice of the Prospector Association, which was admitted without objection, marked Exhibit 4, and is as follows:

**Plaintiff's Exhibit 4—Placer Location Notice.**

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, having discovered gold in the ground hereinafter described claim 160 acres for placer mining purposes to be known as the "Prospector Association," situated on Otter Creek, a tributary of the Iditarod in the Innoko Mining District, District of Alaska, and described as follows, to wit:

Commencing at the initial post and running 5,280 feet downstream to lower center post and 1,320 feet on each side of center posts to corner posts.

Located this 10th day of April, 1909.

Locators—C. C. CHITIC,  
TOM DAVIS,  
JIM MUCKLE,  
WM. PILLERS,  
J. MORROWS,  
IRA VAN ORSDOL,  
W. STANLEY,  
L. BLACKBURN,

By JOHN BEATON,

Agt.

Witness:

W. A. DIKEMAN.

2138.

Endorsed: 2138. Recorded at the request of W. A. Dikeman, Jun. 8, 1909, at 2:30 P. M., at page 68, Vol. 1, Records of Innoko Rec. Precinct. W. A. Vinal, Recorder. By H. J. Vinal, Deputy.



(Testimony of S. C. Adams.)

#152-1. S. C. Adams vs. Yukon Gold Co.  
Pltffs. Ex. "4." July 28, 1914. Angus McBride,  
Clerk.

*In the District Court for the District of Alaska,  
Division No. 4, at Iditarod.*

United States of America,  
District of Alaska,  
Division No. 4,—ss.

### CERTIFICATE.

I, Angus McBride, Clerk of the District Court for the District of Alaska, Division No. 4, hereby certify that the foregoing and hereto attached *one pages* of typewritten matter, numbered from — to —, both inclusive, constitute a full, true and complete copy, and the whole thereof, of the original Location Notice of the "Prospector Association" mining claim, as used in evidence in Cause No. 152-1 entitled, S. C. Adams, Plaintiff, vs. Yukon Gold Co. et al., Defendants, and marked Pltffs. Ex. "4," as the same appears on file in my office.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this thirty-first day of July, 1914.

[Seal]

ANGUS McBRIDE,  
Clerk. [40]

Q. Now, referring to a later time and the staking of the Anaconda Number 2, when did you stake that?

A. I believe it was July 19th, 1913.

Q. And where did you stake it?

A. It covered—I began at the southeast corner.



(Testimony of S. C. Adams.)

Q. Of what?

A. Of the Prospector, or the southeast corner of the Anaconda Fraction, and staked 125 feet north; then 5,280 feet west; then 125 feet south, and then 5,280 feet back to the place of beginning.

Q. When you measured the west line of the Prospector in the first place from what you took to be the initial post to the Mohawk, what distance did you make it?

A. From the initial post to the Mohawk I measured 1,445 feet.

Q. Did you also measure the east line from the—  
(interrupted).

A. You have got that mixed. That should be the east line. That is 1,445 feet. The east line is upstream.

Q. The line upon which you placed your initial stake of your Anaconda Fraction you made 1,445 feet?     A. 1,445 feet. Yes, sir.

Q. Now, the opposite line to that, what did you make it? Did you measure it?

A. That was some place between 1,475 and 1,500 feet. Yes, sir.

Q. Did you measure the length of the claim?

A. Yes, sir. I found the length of the claim, as near as I can remember now—I haven't the notes from last year. But it was something like 5,700 or 5,750 feet. One line was a little longer than the other.

Q. In staking the Anaconda Number 2, you staked clear across, did you, or aimed to?

(Testimony of S. C. Adams.)

A. I aimed to stake clear down to 5,280 feet. I didn't stake down to the lower line, to the lower post. [41]

Q. When did you say you staked that?

A. July 19th, 1913.

(Plaintiff offers in evidence the Notice of Location of the Anaconda Number 2, and there being no objection by defendant, it is admitted in evidence and marked Plaintiff's Exhibit Number 5. Plaintiff also offers in evidence what purports to be a writing casting off a certain part of the Prospector, and there being no objection by the defendant, it is admitted and marked Plaintiff's Exhibit Number 6.)

Q. I show you Plaintiff's Exhibit 6. (Hands same to the witness.) Did you ever see that before?

A. I seen this in the mail sometime after I arrived in June. I don't know just what date. It must have been about the 20th of June.

Q. What year? A. Of 1914.

Q. You say, after you had arrived. Where had you been? A. I had been outside.

Q. Now, referring back to the conversation that you say you had with Mr. Austin, who was manager of the Yukon Gold Company, in August I believe you said of 1912, was there an Anaconda Fraction mentioned at that time? A. Yes, sir.

Q. Just state that conversation as you remember it.

A. I had met Mr. Austin. I had an appointment with him. I went into the office. I was informed by William Lang that he had a chance to sell his

(Testimony of S. C. Adams.)

quarter interest in the Anaconda, and I had an option and an agreement with him and he couldn't sell it until I sold. And I went in and interviewed Mr. Austin. He showed me a blue-print of the Anaconda Fraction, or he claimed there was a fraction between the Prospector and the Mohawk, and I also claimed a fraction off the Mohawk, but he claimed that I had no fraction existing there. He wanted to know what I wanted for the ground [42] and I gave him my prices, and he said they were too high. But I told him that was my lowest price and I would have to wait.

Q. The prices you speak of include other ground?

A. Yes, sir.

Q. Mr. Adams, was this Anaconda Number 1 the first placer claim you ever staked?

A. It was the first claim I ever staked. Yes, sir.

Mr. HILL.—I suppose it is conceded that Mr. Austin was the agent of the Yukon Gold Company?

Mr. RODEN.—Yes.

Mr. HILL.—Q. You testified as to the conversation between you and some other gentlemen—Mr. Cash Chittie, Mr. Jim Muckler, William Lang and Star Ballard,—who else was present?

A. Charles Krutzinger.

Q. In which you asked Cash Chittie and Jim Muckler for permission to stake off the Prospector. Where is Star Ballard that you referred to?

A. He is in Seattle at present.

Q. Where is Jim Muckler?

A. Jim Muckler I understand is dead.

(Testimony of S. C. Adams.)

Q. Do you know where Jim Muckler died?

A. I found out last summer that he died in Ruby.

Q. Where is Cash Chitic?

A. Cash Chitic is dead. He was lost on the Seward Trail.

Q. When did he die?

A. I believe it was the winter of 1913, or spring of 1914. 1913 I guess. Winter of 1913. [43]

Q. Do you know when Jim Muckler died?

A. I do not. No, sir.

Mr. HILL.—That is all.

Cross-examination.

(By Mr. RODEN.)

Q. And William Lang. Where is he?

A. William Lang. He is dead. He died at Cripple Creek.

Q. When did you for the first time go upon this Prospector claim?

A. The first time? The town of Flat is upon the Prospector.

Q. I mean, with a view to measure the claim to see if there was an excess.

A. Well, we measured it on the 22d of May.

Q. The 22d of May, 1911? A. Yes, sir.

Q. Before the 22d of May, 1911, or before you measured this claim, did you go to the recording office to look at the notice there?

A. No, sir. I did not.

Q. When you went on there for the purpose of measuring, who went with you?

A. We hired a man by the name of Warren Pun-

(Testimony of S. C. Adams.)

tila. I have an affidavit from him.

Q. You and William Lang took him with you.

A. Took Puntila with us.

Q. Which stake of the Prospector did you find first? A. We found the north—(interrupted).

Mr. RODEN.—It may be easier and probably more intelligible to take the map, one of the old exhibits. (Hands a map to the witness.)

Q. Which stake did you first find of that Prospector?

A. It would be the northeast corner. [44]

Q. What did you find there?

A. I found a bunch of stakes there. I believe there was a—(interrupted).

The COURT.—Do you propose to introduce this in evidence?

Mr. RODEN.—I was going to do it with the testimony of the other witnesses.

Q. You found the northeast corner stake of the claim. How did you know it was the northeast corner stake of the Prospector?

A. Well, at that time I could make out some writing on it I believe.

Q. Then what did you do?

A. I measured from here (indicating) over to the southeast corner.

Q. Of the Prospector? A. Of the Prospector.

Q. You found the southeast corner of the Prospector, did you?

A. Adjoining the initial stake of the Mohawk; yes, sir.

(Testimony of S. C. Adams.)

Q. In measuring that line down there, did you see any other stakes?    A. No, sir. I did not.

Q. Was that line blazed?    A. Yes, sir.

Q. How was it blazed?

A. Well, it was blazed through there.

Q. Was it blazed so you could follow it?

A. Yes, sir.

Q. And you saw no other stakes between the north-east and southeast corner stakes?

A. No, sir. [45]

Q. What was the next thing that you did?

A. After that I measured this line down to the other line—the side line.

Q. You measured along the northerly boundary line of the Prospector?

A. The northerly line. Yes, sir.

Q. How did you establish that line?

A. On that line I found that stake away down at the lower end, across the river.

Q. You found a stake?    A. Yes.

Q. Could you follow the line there?

A. Follow the line pretty near all the way. There were places where you couldn't follow the blazes?

Q. Why couldn't you follow it?

A. Because the brush had grown up.

Q. But you found the northwest corner of the Prospector?    A. Yes.

Q. Was there any writing on that stake?

A. I am not sure whether there was any writing on that stake or not.

Q. Can you remember how you established it as



(Testimony of S. C. Adams.)

being the northwest corner of the Prospector?

A. Yes, sir. There was a cabin down there, and it was the only stake I could find over there that came anywhere near where the Prospector stake should be.

Q. Then what did you do?

A. Then I measured across to the southwest corner.

Q. Of what claim?

A. Of the Prospector. That would be—the Mohawk stake was there. [46]

Q. That would be the upper stake—(interrupted).

A. The northwest corner stake of the Mohawk, and I believe the Black Fox. There was a bunch of stakes standing there.

Q. When you measured the line from the northwest corner post of the Prospector to the southwest corner post of the Prospector, did you come across any other stakes? A. No, sir, I did not.

Q. Did you follow the line between those two stakes? A. As near as I could. Yes, sir.

Q. The line was blazed, wasn't it?

A. I am not positive. There was some blazing through there. I followed the line as near as I could, but I couldn't say—(interrupted).

Q. You didn't see any stake marking the original lower center stake of that line? A. I did not.

Q. I didn't mean to say marked "original" on the stake, but simply "lower center stake."

A. No, sir. I have never.

Q. And at the other end line you say you saw no

(Testimony of S. C. Adams.)

stake between the northeast and southeast corner stakes?

A. No, sir. I never did see a stake—(interrupted).

Q. You didn't see a stake on that line there marked "Initial stake"? A. No, sir. I didn't.

Q. Did you look for any stakes along there?

A. I have.

Q. And you never found them? A. No, sir.

Q. This was in May, 1911?

A. In May, 1911. Yes. [47]

Q. On the 22d of May?

A. 23d of May I located.

Q. I mean when you went over the claim was on the 22d? A. On the 22d, yes.

Q. And the following day you located? A. Yes.

Q. When you measured the easterly end line of that claim, how long did you find it?

A. 1,445 feet.

Q. And how long did you find the westerly end line?

A. It was, as near as I remember now, between 1,475 and 1,500 feet.

Q. And how long did you find the northerly boundary line?

A. As near as I can remember, it was something like 5,700 or 5,750 feet. There was a little difference between the two lines, the northerly and the southerly.

Q. How much did you find? How long was the southerly boundary line?

(Testimony of S. C. Adams.)

A. There was some difference,—fifty feet or more—between them.

Q. Were you careful in measuring those distances?

A. Yes, sir. As near as I could.

Q. How did you measure them?

A. We had a little tape line and the three of us would go along and put pegs in.

Q. When was it that you say you talked to Cash Chitic and Jim Muckler?

A. It was some time the latter part of March or the first of April, 1911.

Q. And what did they tell you?

A. They told me that I could stake a fraction at either side or end that I wished, if the Prospector was in excess of 1,320 feet by 5,280 feet, as all they claimed was 160 acres. [48]

Q. How did that conversation happen to come up at that time? Did you then know or have an idea that the Prospector was excessive?

A. I did. Yes, sir.

Q. When had you found that out?

A. There were different men I talked to that year and different interests being bought—some interests being bought in the Mohawk at that time. And I was figuring on getting hold of some ground if there was any ground to be had, and I had been over the Prospector and Mohawk many times.

Q. You had been over the Prospector before the 22d of May with a view of ascertaining if there was any excess?

A. If it was large. And I always thought it was

(Testimony of S. C. Adams.)

large every time I had been over it.

Q. Did you tell Cash Chitic and Muckler that it was excessive?

A. I told them I thought it was large.

Q. What did you tell them, as near as you can recollect now?

A. I told them I thought it was in excess of 160 acres.

Q. But you never told them at any one time, as a matter of fact, that it was excessive?

A. Not to my knowledge.

Q. What reply did they give to you?

A. They told me at that time that if it was in excess of 1,320 feet by 5,280 feet that I could stake at either side or end that I wished.

Q. This was in March?

A. Latter part of March or first of April.

Q. And after you measured it on the 22d of May, 1911, and before you staked it, you didn't tell them that the claim was excessive, as a matter of fact, did you?

A. I don't remember as I saw them. I measured it for the purpose of staking it, and as soon as I got it measured staked it. [49]

Q. You didn't tell them that it was excessive, did you?

A. A very short time after that I was doing work on it, and they knew I had done the work on it, and they never—(interrupted).

Q. Answer the question.

(Testimony of S. C. Adams.)

A. I didn't go to them and tell them that it was excessive.

Q. You never did tell them? (No answer.) Now, did you ever figure out from the figures that you obtained as the result of your measurements, what the excess in area really was?

A. No; not exactly. In the first fraction is probably about six or seven acres, and—(interrupted).

Q. Let's not get the matter mixed up. Did you ever figure out how many acres that would make?

A. In the whole Prospector?

Q. Yes. According to your figures.

A. No. I never figured it out exactly. But I knew that 160 acres was 1,320 feet by 5,280 feet.

Q. Did you ever figure out how much it would make? A. No, I never did.

Q. Anywhere near?

A. Why, it was a few acres over.

Q. Do you know as a matter of fact that according to your figures it would make 192 acres in the Prospector?

A. I do not. I have never figured it out.

Q. How did you determine upon how much ground you should stake?

A. I figured the east line was 1,445 feet, and that it should be 1,320 feet; and the west line was between 1,475 and 1,450 feet, and should be only 1,320 feet; and the north line and south line should be only 5,280 feet, and they were about 5,700 feet. [50]

Q. Then you could figure exactly. You are a pretty good man at figures. You were manager for

(Testimony of S. C. Adams.)

a big mercantile company.

A. At that time I didn't take the chances, as I remember, of figuring out how many acres it was. I probably could do it if I had thought of it at the time.

Q. We will go back to your conversation with Cash Crittic. At the time you talked to Cash Chittie before the time you staked—you staked it May 23d, 1911—you knew who the owners of the Prospector Association were, didn't you? A. I did not.

Q. Did you ever make any effort to find out who they were?

A. I did. The only one I ever did find out was a man by the name of Davis, and I heard he was on Happy Creek at one time.

Q. You learned that Tom Davis was a locator?

A. Yes.

Q. Did you ever tell him that the claim was excessive and that you wanted to stake a fraction off of it?

A. I could never find the man.

Q. You knew he was on Happy Creek?

A. I heard he was on Happy Creek and I went over there one time to find him.

Q. Happy Creek is how far from the Prospector claim? A. About six or seven miles.

Q. Did you know about that time that William Dikeman was an owner in the Prospector claim?

A. I found out he was an owner, but I could never find him. Dikeman wasn't in the country that spring.

Q. Did you ever make any effort to find Dikeman?



(Testimony of S. C. Adams.)

A. I did. But I found out he was not in the country. [51]

Q. When did you make an effort to find him?

A. I inquired at different times.

Q. When, for example?

A. I don't remember just at what time I inquired. It must have been along that spring sometime that I inquired for Dikeman.

Q. You inquired before the 23d of May as to the whereabouts of Dikeman?

A. I don't remember that I did.

Q. Did you know that John Beaton had an interest in that claim? A. No, sir.

Q. You know it now?

A. I know it now. Yes, sir.

Q. When did you find out for the first time that John Beaton had an interest in the claim?

A. After I looked the records up.

Q. When was that?

A. I looked the records up in this trial last year.

Q. That was the first time you found out who the owners of the Prospector claim were?

A. It was before that that I had been talking to Riley and Beaton in reference—(interrupted).

Q. Why did you talk to Beaton if you didn't know he had an interest there before the time of the trial last year?

A. I was trying to sell the interest to Beaton and Riley before that.

Q. Then you knew that Beaton had an interest in the claim?

(Testimony of S. C. Adams.)

A. Beaton, Riley & Marston. Yes.

Q. How do you know that Riley had an interest in there?

A. From some records I found out that Riley and Marston had bought some interest from Beaton.

[52]

Q. Did you find out from those records?

A. I believe I did. I am not sure.

Q. What you found is this: You found an option on record, made by William Dikeman to Riley & Marston, didn't you?

A. That might probably have been it. I don't recollect it just now.

Q. And the Beaton interest had nothing to do with that at all? A. Now, I wouldn't say.

Q. Why didn't you make Riley and Marston parties to your suit and leave Beaton and Dikeman out?

A. I can't answer that right now.

Q. So there may be no misunderstanding. You know now and you have known for some time that William Dikeman did give an option to Riley and Marston on his interest in the Prospector Claim?

A. I guess he gave an interest, or an option, or bought it, or a lay. In some way they got an interest in the Prospector.

Q. Going back to Beaton. Before the 23d day of May, 1913, when you located the Anaconda Fraction, you never notified John Beaton that there was an excess on the claim, did you?

A. The 23d day of May of what year?

Q. 1911.

(Testimony of S. C. Adams.)

A. No. Johnny Beaton—I didn't know who he was, or if he was in the camp.

Q. You didn't know he had an interest in the claim at that time? A. Not at that time.

Q. You never made any effort to find out who had an interest until last year? A. Yes, I had.

Q. You found out in the recorder's office last summer? A. Yes. [53]

Q. Prior to this trial?

A. Yes. And I knew—heard it before then.

Q. Did you ever tell Ira Van Orsdol that there was an excess in the Prospector, prior to May 23d, 1911?

A. I never knew Van Orsdol until last summer.

Q. Did you ever tell Stemley?

A. I never have seen the man Stemley.

Q. Did you ever tell Piller?

A. I do not know Mr. Piller.

Q. Did you ever tell Blackburn?

A. I don't know Blackburn. I don't believe those men have ever been in the camp.

Q. You know Van Orsdol has been in the camp?

A. I never knew it until last summer.

Q. You never knew he had an interest in the claim until last summer? A. Last summer, some time.

Q. When you went to the recorder's office?

A. Yes.

Q. You never thought it worth your while to go to the recorder's office and find out who the locators of the Prospector were, before you staked your fraction on the 23d day of May, 1911.

(Plaintiff objects as irrelevant, incompetent and

(Testimony of S. C. Adams.)

immaterial. Objection sustained.)

Q. Leave out the words, "Never thought it worth your while." You never did go? A. No, sir.

Q. Since you came to this portion of the Territory, you have always known where the recorder's office of this precinct was to be found?

A. It was in Iditarod, six or seven miles away.  
[54]

Q. It has been there all the time that you have been there? A. Yes.

Q. The recorder's office was in Iditarod at the time you located the Anaconda Fraction in May, 1911, and the recorder's office was at Iditarod when you located the Anaconda Number 2 in 1913, wasn't it? A. Yes, sir.

Q. And you have been at Iditarod frequently during the years 1910, 1911, 1912 and 1913?

A. Yes.

Q. Now, that conversation that you had with Mr. Austin was what time in 1912, you say?

A. I believe it was some time in August, 1912.

Q. That was at Flat City?

A. At Flat City, yes.

Q. Who was present at that conversation?

A. Mr. Austin and myself.

Q. What did you say in the course of this conversation?

A. Well, trying to dispose of what ground I had.

Q. At that time what ground did you have?

A. I had the Anaconda Fraction. I had the North Butte.

(Testimony of S. C. Adams.)

Q. Where is the North Butte location with reference to the Prospector Claim?

A. The North Butte is north, paralleling the Prospector.

Q. Does it adjoin the north boundary of the Prospector?     A. It does.     Yes, sir.

Q. And did you have anything else? Did you have any other property at that time you were talking to him?     A. Yes. [55]

Q. What other property did you have?

A. I had a fraction off of the Mohawk, known as the Great Falls Fraction.

Q. Where was that Great Falls Fraction located with reference to the Anaconda Fraction?

A. This (indicating on map) would be the initial stake of the Mohawk. The Mohawk was too large and there was a fraction, the Myrtle, staked off the Mohawk 350 feet wide, and I staked a fraction in between the Mohawk and the Myrtle. There had been a fraction staked there in the early days.

Q. Here is another map. (Hands same to witness.) Now, this map shows both the claims, the Prospector claim and the Anaconda Fraction.

A. Yes, sir.

Q. As I understand you now, your first location of the Anaconda Fraction was 2,640 feet.

A. Yes, sir.

Q. Along the southerly boundary line of the Prospector?     A. Of the Prospector.

Q. And 120 feet northerly.     A. Yes, sir.

Q. And then back 2,640 feet?     A. Yes, sir.

(Testimony of S. C. Adams.)

Q. And the Anaconda Number 2 was 5,280 feet along the southerly boundary line of the Prospector.

A. Yes, sir.

Q. Then northerly 125 feet; then easterly 5,280 feet; and then southerly 125 feet. A. Yes, sir.

Q. You testified with reference to the North Butte that it was located along the northerly boundary line of the Prospector. A. Yes, sir. [56]

Q. Kindly mark it in on the map here. (Witness marks same on the map, and Mr. Roden numbers the corners 1, 2, 3, and 4.) Now, the Great Falls Fraction. Where was that located?

A. The Great Falls Fraction—here (indicating on map) is the initial stake of the Mohawk. Here is stake No. 2 and the southeast corner. Then the Myrtle is staked off 350 and some odd feet, and I staked 25 feet in between the Myrtle and the Mohawk.

Q. You staked 25 feet along the easterly—(interrupted).

A. The southerly line, or the easterly line of the Mohawk.

Q. And 5,280 feet long. Is that what it was?

A. That was what it was.

Q. In a—(interrupted).

A. Westerly direction.

Q. Then 25 feet northerly; then 5,280 feet easterly again. A. Yes, sir.

Q. So, when you had the conversation with Mr. Austin you offered to sell him your Great Falls Fraction. A. Yes, sir.



(Testimony of S. C. Adams.)

Q. Between the Myrtle and the Mohawk.

A. Yes, sir.

Q. Your Anaconda Fraction between the Mohawk and the Prospector,     A. Yes.

Q. And your Great Falls Fraction lying along the northerly boundary—(interrupted).

The COURT.—You mean the North Butte.

Mr. RODEN.—Yes.

A. The North Butte.   Yes.

Q. What was said at that time with reference to this Anaconda Fraction?   [57]

A. The blue-print that he had showed the Anaconda Fraction. But he claimed there was no Great Falls Fraction existing.

Q. The blue-print which Mr. Austin had showed the Anaconda Fraction?     A. Yes.

Q. You are sure of that?

A. Yes. I am sure of that.

Q. Did he say anything about the name?

A. No. He said there was a fraction there, and there was a line there, a white line. It was on a little blue-print that he showed me that day. And he said there was a fraction there and wanted to know what I wanted for it, and I told him what I wanted for all the interests, and he said it was too much.

Q. You maintain that the Anaconda Fraction was marked on that blue-print.

A. I wouldn't say it was marked "Anaconda Fraction." I say there was a fraction there, and Mr. Austin said there was a fraction there.

(Testimony of S. C. Adams.)

Q. He said there was a fraction between the claims.     A. Between the Prospector and Mohawk.

Q. Did he say at that time that there was a fraction between the Prospector and the Mohawk, or a fraction off the Prospector?

A. He said there was a fraction there, and in his blue-print was shown a fraction drawn in between the Prospector and the Mohawk.

Q. So, if I understand you correctly, the blue-print showed the fraction between the southerly boundary line of the Prospector and the northerly boundary line of the Mohawk.

A. It would be between them or taken off the Prospector. [58] It showed the same. Mr. Austin, as I took it, knew my fraction was there and put it on his map, and it showed the fraction there.

Q. As you say, it showed or might have showed it as being off the southern end of the Prospector.

A. The southerly side.

Q. That is what I mean; the southerly side. Now, didn't it clearly show you that it was off the northerly side of the Mohawk?

A. There was no fraction off the northerly side of the Mohawk, because, the way they had the map, the initial stake of the Mohawk would show on his map.

Q. It showed all the stakes, did it?

A. Well, I don't know as it showed the stakes. It showed the block of the Mohawk and it showed the block of the Prospector, and it showed the claims above it.

(Testimony of S. C. Adams.)

Q. And this conversation you say took place in August, 1912.

A. Some time in August, as I remember.

Q. And you and Mr. Austin couldn't make a deal.

A. We did not. No, sir.

Q. Then you said, in answer to a question Mr. Hill put to you, that the Anaconda Fraction was the first claim that you ever located.

A. Yes. That is right.

Q. The first claim you ever located in your life.

A. Yes, sir.

Q. That was on the 23d of May.

A. 23d of May, 1911.

Q. When did you locate the North Butte?

A. It was the same day or the day after. [59]

Q. Wasn't it the day before?

A. No. I don't think so.

Q. You recorded the location notice of that, didn't you? A. Yes, sir.

Q. Is the correct date in that location notice?

A. Yes. I believe it is the day after. I believe it is the 24.

Q. Now, did you locate the Butte Fraction, too?

A. Yes.

Q. Where is that located?

A. This Butte Fraction was an old location that I found out didn't exist.

Q. Where was it located with reference to the Anaconda Fraction? A. It covered the Myrtle.

Q. Along which line?

A. It covered the whole Myrtle, 350 feet.

(Testimony of S. C. Adams.)

Q. In width?      A. In width.

Q. You tried to take in by your Butte Fraction all the ground already covered by the Myrtle.

A. Yes, by the Myrtle stakes.

Q. When did you stake that?

A. That was about the same time. It might have been the 22d, 23d or 24th.

Q. So, you wouldn't be positive whether or not the location of the Anaconda Fraction was the first claim you ever staked in your life.

A. The Butte Fraction might have been the first, and it might have been on the 23d or 24th, but just about that time.

Q. You couldn't find the Myrtle stakes when you attempted to locate the Butte Fraction all over the Myrtle? [60]      A. Not at that time.

Q. You found them afterwards.

A. I found them afterwards.

Q. When did you locate the Anaconda Number 2?

A. It was July 19th, 1913.

Q. Before you located the Anaconda Number 2 did you see any of the then owners of the Prospector Association?      A. I did not.

Q. What induced you to locate the Anaconda Number 2?

A. There was extra ground there and they never cast any of it off, and I knew that the ground was wide.

Q. How did you know there was an excess?

A. I measured it before.

Q. You measured it once before?      A. Yes, sir.

(Testimony of S. C. Adams.)

Q. And you figured it out after you made your location of the first fraction.

A. Yes. I figured it out.

Q. How many acres did you make it at that time that the excess amounted to?

A. Why, I figured it was an excess of over 20 acres.

Q. You made an attempt to take that all in?

A. As near as possible. Yes, sir.

Q. Now, at that time why didn't you locate Anaconda Number 2 in some other shape?

A. I couldn't take a piece of ground out of the center of their claim. That wouldn't hardly be right.

Q. You located the Anaconda Fraction and took a piece right out of their claim.

A. From the initial stake 1,320 feet by 5,280 feet. I allowed them all that ground intact. [61]

Q. When you located the Anaconda Fraction you took a piece right out of the very body of the claim and left them a little strip towards the south, and the body of the claim due north.

A. It was too wide all the way down, and too long.

Q. I ask you if you did that?

A. I took a piece 2,640 feet clear across the creek. Yes, sir.

Q. This map is correct, isn't it?

A. As near as I remember.

Q. So, when you staked the Anaconda Fraction here you just cut a piece right square out of the Prospector claim.

(Testimony of S. C. Adams.)

A. I took it off of the south, off to the side, as Mr. Chitic and Mr. Muckler told me I could do. They told me to take it off either side or end as I wished. That is why I took it off the side.

Q. When you located your Anaconda Number 2, why didn't you take more ground in a northerly direction, and not take this long narrow strip along there?

A. I always felt that I should leave them their 1,320 feet wide.

Q. That is how you felt.

A. Yes. I didn't believe it was right if I had gone in and taken 20 acres out of the center here—that wouldn't have been right—and leave them ground on all sides.

Q. You were looking for the pay, were you not?

A. Yes.

Q. You didn't have much compunction in taking away pay from the Yukon Gold Company.

A. The Yukon Gold Company wasn't in the country when I staked that. [62]

Q. When you staked Number 2?

A. When I staked Number 2 they were.

Q. They were the owners of it when you staked Number 2, with the exception of Dikeman and Beaton.

A. I don't know what interest they owned.

Q. Do you know what interest they have now?

A. I couldn't state without looking it up. I don't know what interest they have. I know they have some interest, but I don't know the amount.



(Testimony of S. C. Adams.)

Q. You know they have that ground.

A. I don't know if it is a  $\frac{1}{2}$ ,  $\frac{1}{4}$ ,  $\frac{5}{8}$ , or what.

Q. At the time you staked the Anaconda Fraction Number 2 they had the same interest as to-day, so far as you know?      A. As far as I know.    Yes.

Q. But you didn't want to take the pay away from them. (No answer.) When you located that Anaconda Fraction you were the owner of the North Butte claim which lay alongside of the northerly boundary of the Prospector. Now, why didn't you locate the fraction at the northerly end so as to get your ground all in a body?

The COURT.—Do you mean the end or the side?

Mr. RODEN.—The north side.

A. The North Butte was located by eight of us at the time.

Q. And the Anaconda Fraction?      A. By two.

Q. That is the reason why you separated your locations.      A. Yes.

Q. You didn't want them in a body. (No answer.) Why didn't you locate at either of the end lines?

A. For the simple reason that I had made a discovery in Flat Creek, and I had never made a discovery on either end of the claim, and I figured that I shouldn't locate at either end if I hadn't made a discovery.

Mr. RODEN.—That is all. [63]

Redirect Examination.

(By Mr. HILL.)

Q. In answer to Mr. Roden's questions about the

(Testimony of S. C. Adams.)

ownership, you said you had never looked up the record, as I understood it, before the time you located the Anaconda, that is, May 23d, 1911.

A. May 23d, 1911.

Q. What did you know, if anything, about the ownership of Cash Chitic or Jim Muckler?

A. I had seen Mr. Chitic working there on the Prospector, and I knew that the town of Flat was on the Prospector. I knew where the Mohawk was—(interrupted).

Q. I am not asking you about that. I asked you what you knew about Cash Chitic and Jim Muckler.

A. I know they told me they had an interest in the Prospector Association.

Q. Did you know Ira Van Orsdol at that time?

A. No, sir. I did not.

Q. Do you know whether he was in the camp here at that time?

A. I never knew the man until last summer. I don't believe he was in the camp at that time.

Q. Do you know whether Mr. P. F. Stimley was in the camp at that time?

A. No, sir. Mr. Stimley, to my knowledge, has never been in the camp since I have been here.

Q. William Piller?

A. I don't believe Mr. Piller has ever been here since 1910, since I have been here. I have never met him.

Q. Blackburn. Louis or Sam. I don't know who located this.

Mr. RODEN.—Louis.

(Testimony of S. C. Adams.)

A. No, sir. I have never heard of Mr. Blackburn claiming. [64]

Mr. HILL.—Q. You spoke about seeing Davis, or trying to see Davis. When did you learn about Davis?

A. That was some time in March or April before I had staked this ground. I had heard that Tom Davis owned an interest in the Prospector.

Q. When was it you were trying to see him?

A. It was some time the latter part of March or first of April. I believe it was along about the first of April that I went over to Happy Creek.

Q. When was the first time you ever looked up the records as to the Prospector Association?

A. I couldn't just exactly state the time. I know I looked up the records on it.

Q. Do you know what year it was? Did you look them up in 1913 or 1912.

A. I believe—I wouldn't say it was 1912—in 1913.

Q. You looked them up in 1913?

A. Yes. And I think I looked them up in 1914. I know I looked them up in 1914.

Q. Now, at the time you were with Mr. Austin, you claimed the North Butte claim, and what other claims?

A. The Great Falls Fraction and the Anaconda Fraction.

Q. And what else?

A. And I believe I had the Ben Hur on Chicken.

Q. This Butte Fraction that you told about. You say you staked that over the Myrtle.

(Testimony of S. C. Adams.)

A. That was a fraction that was staked over the Myrtle. I looked up the Myrtle stakes and I could never find the stakes, and I staked a fraction there called the Butte Fraction. Then I found the *Butte* stakes and abandoned the Butte Fraction. [65]

Q. You what?

A. I gave up the Butte Fraction, as I found the Myrtle was an existing claim.

Q. When you staked the Anaconda you aimed to follow the line of the Mohawk.

A. I aimed to join the Mohawk line. Yes.

Q. If this map should be correct—and I do not admit that it is—if this map should be correct, then the southwest corner should be a little off of the dark line. Is that intentional? (Indicating on map.)

A. No, sir. If this is correct and this is the Mohawk line, the stake should be over here, because I aimed to carry this line clear through that Mohawk line.

Q. Now, do you know whether there is any initial stake of the Prospector at that point on the bend of the river now?

A. I believe that Mr. Austin made a survey and that they put that stake there. I was never able to see any stake there before at any time.

Q. The stake that is there now is a new stake, is it?

A. It is a stake. Yes, sir.

Q. At this northeast corner of the Prospector, that stake that you saw there you thought was the initial stake.

(Testimony of S. C. Adams.)

A. I have always taken that for the initial stake of the Prospector—the northeast corner stake.

Q. Do you remember what was on that stake when you first saw it?

A. As near as I remember it was marked “Prospector Association.”

Q. Was there anything else on the stake?

A. I couldn't swear to that.

Q. Any notice? [66]

A. I have seen notices posted on there. As near as I remember, there was a notice posted on there at one time about wood not allowed to be cut on this claim—the Prospector claim, signed by Mr. Chittie. I know in the winter or spring of 1911 Mr. Chittie was having quite a time forbidding people to cut wood on the Prospector. Fellows would go out and cut a little wood for their fires, and he claimed he needed all the wood for mining purposes.

Mr. HILL.—That is all.

Recross-examination.

(By Mr. RODEN.)

Q. Cash Chittie and his brother were working on the claim when you staked that fraction?

A. Yes, sir.

Q. Working a lease, as laymen and owners?

A. Yes, sir.

Q. Do you want the Court to understand now that the initial stake at the easterly boundary was put up there at the time the survey was made there,—this

(Testimony of S. C. Adams.)

stake here; that this stake was put up there during the last eighteen months?

A. I claim that I had never seen a stake there until last summer.

Q. How many stakes had you seen there?

A. This last summer?

Q. Yes. At that point.

A. As near as I remember, I only saw one.

Q. That is the first time you saw it.

A. That is the first time I ever saw a stake there.

Q. This Prospector claim is a claim located on Otter Creek. A. Yes, sir. [67]

Q. Do you know what the custom was in this country in reference to staking fractions or excessive areas?

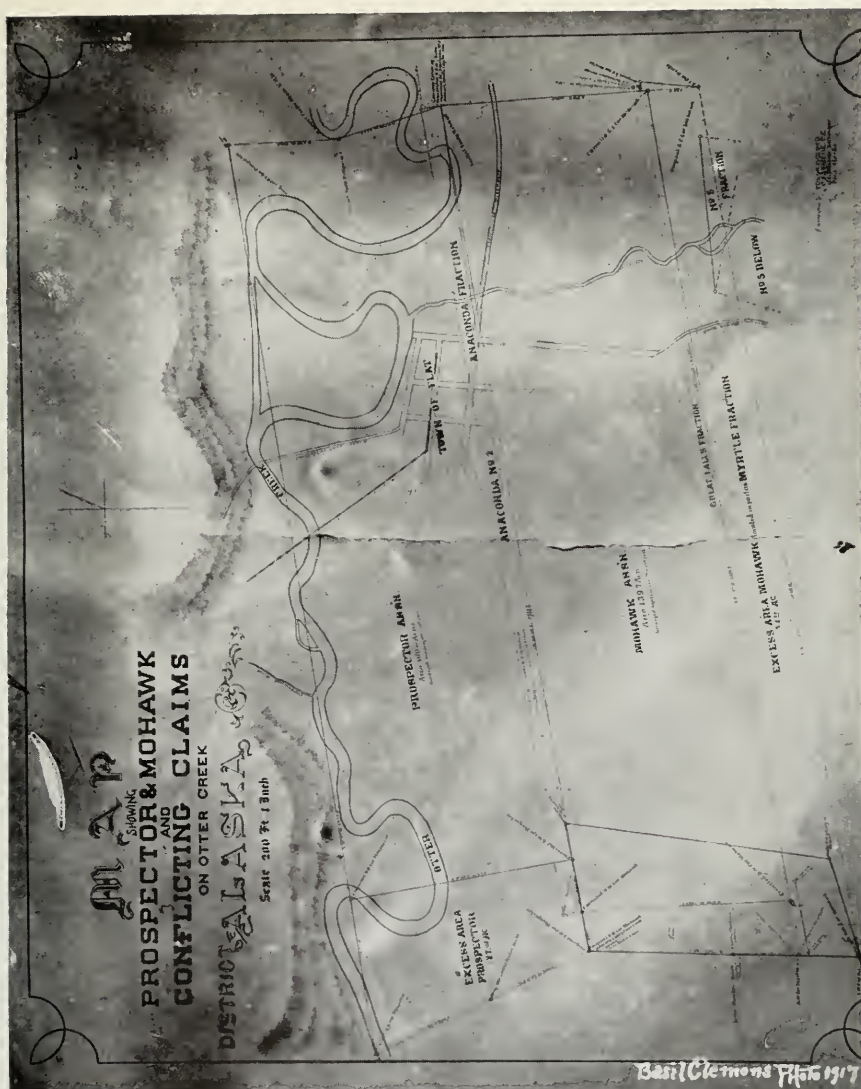
(Plaintiff objects as immaterial and irrelevant. Objection sustained. Mr. Roden states that he withdraws the question.)

Mr. RODEN.—That is all.

(The map drawn on paper and heretofore referred to in the testimony of the witness is introduced in evidence and marked as Defendant's Exhibit "A," as giving and showing a general idea of the properties, but the markings on it, such as "Initial stake of the Prospector," are objected to by plaintiff, and not admitted to be correct.)



### Defendants' Exhibit "A."



(Testimony of S. C. Adams.)

Mr. HILL.—Is it conceded that there is 27 acres excess?

Mr. RODEN.—Yes.

Mr. HILL.—Just another question. Q. Out here at the northwest corner of the Prospector, along this northwest end of the Prospector, what did you find when you looked it over, relative to other stakes? You mentioned the Black Fox.

A. The Black Fox runs right on down the creek from the Prospector, runs down west.

Q. From the west end of the Prospector the Black Fox claim is the next one.

A. I believe the Black Fox is the next one.

Q. Were there stakes indicating claims adjoining the Prospector at the west end?

A. We found stakes here. (Indicating.) Quite a bunch of stakes. And I believe there were two stakes here. I think there was one stake sitting out quite a little ways from another stake. And there was an old cabin down there.

Q. What is the nature of the ground off here to the westward?

A. It makes a little turn of the river here, and there is bluffs, and then the ground is flat like the rest of the creek. The river turns and there is a bluff in here and it comes into another bluff. It is about the same as up Otter, as near as I remember.

Mr. HILL.—That is all. [68]

**Testimony of E. A. Austin, for Defendants.**

E. A. AUSTIN, a witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. RODEN.)

Q. Your name is E. A. Austin.      A. Yes, sir.

Q. What position do you occupy for the defendant the Yukon Gold Company?      A. Resident Manager.

Q. How long have you occupied that position?

A. Since the spring of 1912.

Q. Do you know the plaintiff in this action, Mr. S. C. Adams?      A. Yes, sir.

Q. Did you know him in the fall of 1912?

A. Yes. I met him during the summer of 1912.

Q. Do you remember the interview he had with you to which he testified herein in his examination this morning?      A. Yes, sir. I do.

Q. State to the Court about what time of year that took place.

A. I don't recollect just exactly what time, but I know it was during the summer. It was probably in July or August. I think in August.

Q. What year?      A. 1912.

Q. What took place, or what was said at that conversation?

A. I met Mr. Adams on the street, and he told me that he had various claims and wanted to know if we wished to buy the property which he, Adams, owned. So I asked him to come over to the office, I think that

(Testimony of E. A. Austin.)

afternoon. I know it was some time later—which he did. I asked Mr. [69] Adams to tell me where the claims were. He started in telling me, and I asked him to draw a sketch map showing me the approximate locations and the size of the claims. I produced a piece of paper and he drew a sketch showing the different claims that he owned. As I recollect now, he showed the North Butte, the Anaconda, the Great Falls. All those were the claims at the lower end of the creek that he was particularly interested in.

Q. At that time did he explain to you where the Anaconda Fraction was located?

A. Yes, sir. He did.

Q. Where did he say?

A. He told me that the claim was located between the Prospector and Mohawk associations.

Q. Did he say anything about the Anaconda Fraction being a portion of the original Prospector location? A. No, sir. He did not.

Q. At that time, did you show him a map of the Prospector claim and adjoining claims?

A. Yes, sir.

Q. Have you got that map now?

A. I have not the map which I showed him, but this (producing) is a print taken from the tracing from which the other blue-print to which Adams referred was made.

Q. Do you know where the map which you showed at that time is? A. No, sir. I do not.

Q. Who made this tracing here; or, who made your

(Testimony of E. A. Austin.)  
original map, if you remember?

A. The original map was made by a man named Williams, I think in 1911. [70]

Q. And that is the one you showed to Mr. Adams when he interviewed you on that occasion.

A. A print similar to this, made from the same tracing.

Q. Are you positive now that that is an exact copy of the map that you used at that time in your conversation with Mr. Adams? A. Yes, I am.

Q. In that map, does it show the location of the Anaconda Fraction as claimed by Mr. Adams?

A. No, sir. It does not.

Q. Does it show anything about a fraction at all?

(Plaintiff moves to strike the answer until he can object, and objects to testimony as to what the map shows as not the best evidence; that he cannot testify orally to what the map shows without producing his map; that defendant is not offering the map, but asking questions as to what it shows. Objections sustained.)

Q. You remember that map that you had at that time? A. Yes, sir. I do.

Q. I wish you would describe that map with reference to the Mohawk and the Prospector Association claims.

(Plaintiff objects as not calling for the best evidence.)

Q. Do you know where the original map is?

A. The original from which this was taken?

Q. No. The map that you used at the time you had



(Testimony of E. A. Austin.)

the conversation with Mr. Adams.

A. No, sir. I do not. At that time I had quite a few prints similar to this. I think some were blue-prints and some were white-prints. These maps were made up from an original map which was—well, the data was secured during 1911 when Flat Creek was examined for the company by Mr. W. F. Copeland. The tracing was made partly here on Flat Creek, and partly made from notes and made while enroute between here and Tanana. This print was [71] made in New York City during the winter—I think this was made early in the spring of 1912.

Mr. HILL.—I don't like to interrupt, but I move to strike all this answer out as not responsive.

Mr. RODEN.—He is showing what became of the original.

Mr. HILL.—I would like to examine him a little.

The COURT.—As to whether or not it is a correct print? That is another matter.

Mr. HILL.—I don't understand that this is offered as secondary evidence, but I would like to have the privilege of examining him before it is offered as secondary evidence.

The COURT.—(To Mr. Roden.) Do you propose to *differ* this as secondary evidence?

Mr. RODEN.—In due course of the trial, the same as it was in the former case, the former trial.

The COURT.—(To Mr. Hill.) You will have an opportunity to examine him.

Mr. RODEN.—Q. You say this is a true copy of the plat that was used in your conversation with Mr.



(Testimony of E. A. Austin.)

Adams?      A. Yes, sir. It is.

Q. Does that plat show anything with reference to the location of the Anaconda Fraction?

(Plaintiff objects as not the best evidence; that defendant should introduce the plat, and not ask orally what it shows. Objection sustained. Whereupon defendant offers said plat in evidence, and Mr. Hill, on behalf of plaintiff asks, and is given leave to examine the witness with regard to same.)

(By Mr. HILL.)

Q. You say you don't know where the original that you showed Mr. Adams is?      A. No, sir.

Q. And you don't know but what it is in your possession, do you?      A. It may be. [72]

Q. It might be right out at Flat Creek now.

A. Yes, sir. It might be. I have no way of telling one print from another. They are all similar. But I think that the print that I showed Adams at that time was a blue-print. Adams stated it was a blue-print and it probably was. I have blue-prints and white-prints out there.

Q. There were pencilings on it that you and Adams made at that time.

A. I think we did make pencil marks on it at that time. Mr. Adams drew a sketch of his property and I think I sketched it in on this map.

Q. Then, if you had it out there you could find it? You would know it from other maps?

A. I have looked for it, and I couldn't find it.

Q. You didn't destroy it purposely?

A. No, sir. I may have destroyed it. But I

(Testimony of E. A. Austin.)

thought I had it in my possession last year. I had never paid any particular attention to it until I was served with a notice last summer.

Q. Then, this copy which you are offering does not show the pencil marks that you and Adams made there, does it?     A. No, sir.

Q. Then it is not a true copy of the map as Adams saw it and as it was after you and Adams got through with it.

A. Not afterwards. I didn't state it was afterwards.

Q. You couldn't say positively that it wouldn't be in your power and that it is not in your power to produce that map. It might be out there at Flat.

A. It might be, but I don't think it is, because I have looked through our files. [73]

(Plaintiff objects to the map as not a true copy, and shown not to be a true copy of the map as they looked it over; and it is not shown that it is not within the power of the witness to have the true map here; but asks leave to ask another question, which leave is granted.)

Q. This map is not a copy of that map?

A. It is a duplicate.

Q. Taken from the same tracing?     A. Yes, sir.

Q. You had other tracings of that at other times?

A. Not up to the time that was made.

Q. It wouldn't be possible for you to be mistaken—that it could be some other tracing?

A. No, sir. That is the only map of that scale

(Testimony of E. A. Austin.)

which we have of Flat Creek or which we had at that time.

(Plaintiff objects to the said map both because it is not a true copy of the map which was there at the time that he and Adams talked, because that copy was marked, and because there is no proper foundation laid for introducing secondary evidence—there being no showing but what this witness could produce the other map. He may have it, and if he has it the original should be produced, or proof showing that it is lost; further because it is not a copy of that map, but a copy of a map of which that map was a copy. Objection sustained, and defendant excepts. Exception allowed.)

Mr. RODEN.—Q. Did Mr. Adams ever tell you that he claimed a fraction off the Prospector claim?

A. No, sir.

Q. Did he ever tell you that he had measured the Prospector and that there was an excess in it?

A. No, sir.

Q. And ask you to cast it off? A. No, sir.

Q. When did you first become cognizant of the fact that Adams claimed it was more than 160 acres?

A. During the winter of 1913 and '14. I think it was in January, 1914.

Q. That was after the commencement of this suit?

A. Yes, sir.

Q. At the time of the commencement of the suit, did you [74] have any knowledge or information that the Prospector contained more than 160 acres?

A. No, sir.

(Testimony of E. A. Austin.)

Q. After the suit was commenced, what did you do in the way of ascertaining the area contained in the Prospector?

A. I engaged Mr. Estmere to survey both the Prospector and the Mohawk Associations.

Q. Which was done? A. Yes, sir.

Q. What was the result of the survey?

A. We found that the Prospector contained approximately 27 acres in excess.

Q. What did you do then?

A. I instructed Mr. Estmere to place stakes on both the north and the south lines of the Prospector, inclosing— Those stakes, taken with the end stakes of the Prospector, to include only 160 acres; in other words, to cast off the excess at the westerly end of the claim.

Q. Was that done? A. Yes.

Mr. HILL.—We admit that at the time your notice says, he did attempt to cast off an excess.

Mr. RODEN.—Q. When was this excess cast off, do you remember?

A. What do you mean by “cast off”?

Q. When did Mr. Estmere, under your directions, set up those stakes at the westerly end line of the Prospector?

A. I think it was in January. The map is dated January 11th, 1914. I think that must be the date of the survey.

Q. Since January 11th, 1914, you have claimed no excess area. A. No, sir.

Mr. RODEN.—Cross-examine. [75]

(Testimony of E. A. Austin.)

Cross-examination.

(By Mr. HILL.)

Q. You say that Mr. Adams didn't mention to you that this was a fraction of the Prospector.

A. Yes.

Q. And, when you say that, you mean that by "off" he meant that it was not taken from the Prospector?

A. Yes.

Q. That he didn't tell you it was a part of the Prospector. What you thought he meant was, that the Prospector stake didn't come up to the Mohawk stake. Was that it? A. Yes.

Q. You thought he meant that there had been some absolutely vacant ground between the Prospector and the Mohawk.

A. That the two stakes were not common.

Q. You thought that was it; that the two stakes were not common, A. Yes.

Q. That was when?

A. That was during the summer of 1912, probably in August.

Q. When did you first acquire an interest in the Prospector—your company?

A. I don't recall, but it was in the latter part of the summer. It was before November, 1912, or around that time.

Q. At the very time Adams was talking with you, you had been interested in purchasing interest in the Mohawk, hadn't you?

A. We had not acquired any at that time.

Q. But you were tracing it up and treating about

(Testimony of E. A. Austin.)

it?     A. Yes, sir.     [76]

Q. And you were also treating about purchasing an interest in the Prospector?     A. Yes.

Q. You wouldn't say that you hadn't purchased an interest already in the Prospector?

A. Yes. We had not.

Q. Or you were simply contemplating it. Negotiations were on, and when Mr. Adams told you that he had a fraction in there, you didn't take occasion to look it up.     A. Yes.

Q. Did you go to the stakes?

A. Yes. Not to the stakes. Not to all the stakes of the claim. I went to this stake (indicating on map) and found that the Prospector and the Mohawk stakes were at the same point. They were common stakes. There was a common corner for the two claims.

Q. Did you see the Anaconda stake at that time?

A. Yes.

Q. And you didn't take the trouble to go and find out where the other Anaconda stakes were, did you?

A. No, sir.

Q. You know at that time that Adams was claiming a fraction there 120 feet wide, didn't you?

A. Yes, sir. He told me that. He told me that he was claiming a fraction there and wished to sell it.

Q. He told you the size of it?

A. He probably did. I don't just recall.

Q. He marked it out for you on the map?

A. Yes, sir. Drew a sketch of it.     [77]

Q. And some of the other owners of that ground



(Testimony of E. A. Austin.)

talked to you about that fraction about that time, didn't they?

A. I inquired from some of the owners. I can't recall who they were. I think Mr. Aitken is one, but I am not certain. I discussed it with some of the owners.

Q. Prior to that, William Lang had come to you. He also claimed to be an owner and was an owner, if there was an Anaconda Fraction. He had come to you before that. A. Yes, sir.

Q. He had also discussed with you the Anaconda Fraction. A. Yes.

Q. And Mrs. Carter, who was an owner, had discussed with you the Anaconda Fraction before that, hadn't she?

A. I am not certain about that.

Q. Or about that time?

A. I don't think Mrs. Carter owned an interest in the claim at that time.

Q. Possibly she didn't. But she was discussing with you, or did discuss with you about that time the Adams claim of a fraction there, didn't she?

A. I don't think she did, but still she may have. I am not certain.

Q. How long have you been manager of the Yukon Gold Company in this country?

A. Since June—Well, since early in 1912.

Q. What was your position before that?

A. Mining engineer.

Q. How long have you been a mining engineer?

A. That is a hard question to answer. [78]

(Testimony of E. A. Austin.)

Q. Don't mining engineers get a degree some way?

A. They generally do.

Q. Did you? A. No, sir.

Q. Then you haven't any fixed period like that from which to date your entrance into the profession? A. No, sir.

Q. About when did you become a mining engineer?

A. In the spring of 1906.

Q. You have been six years engaged as a mining engineer? A. Yes, sir.

Q. All of that time familiar with mining?

A. I try to be.

Q. Familiar with the location of claims?

A. Yes, sir. In a general way.

Q. And the only thing you knew about a fraction was that when a man claimed a fraction he meant there was a space between two claims. Is that right?

A. No, sir. That is not right.

Q. Then you knew a man could claim a fraction because of an excess area. A. Yes.

Q. You didn't take the trouble to look it up?

A. To have taken the trouble to look what up?

Q. You are here complaining because another man did take the trouble to look it up.

(Defendant objects as argumentative. Sustained.)

Q. You did take the trouble to look it up, then?

A. I took the trouble to look up, and found out that the fraction did not lie between the Prospector and the Mohawk, which Mr. Adams claimed it did.

[79]

Q. You found out at that time that the two claims

(Testimony of E. A. Austin.)

adjoined, but you didn't take the trouble to find out if there was an excess area.      A. No, sir.

Q. But you went right ahead objecting, knowing that he claimed in there, without looking up the excess area.      A. Yes, sir.

Mr. HILL.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. He never told you anything about excess area, did he?      A. No, sir. He did not.

Mr. HILL.—We object to that, as not proper redirect.

The COURT.—Objection overruled.

Mr. RODEN.—That is all.

Mr. HILL.—That is all. [80]

Thereupon it was stipulated by counsel for the plaintiff and counsel for the defendants, in open court, that this cause might be transferred to the Ruby calendar and further testimony introduced on behalf of either party at Ruby, Alaska.

Whereupon an adjournment was taken. [81]

### **Testimony of John Beaton, for Defendants.**

JOHN BEATON, a witness called on behalf of the defendants, being first duly sworn, testifies as follows:

My name is John Beaton; I have resided at Otter Creek since the fall of 1908. I was at Otter Creek during the months of March or April, 1909. I know what is known as the Prospector Association. We were on that ground for the first time in September,

(Testimony of John Beaton.)

1908. We prospected there—panned below the mouth of Flat, on the rim side of the creek. By we, I mean Dikeman and me; William Dikeman, one of the defendants in this case. I staked the Prospector Association claim in April, 1909. William Dikeman was with me. We started and staked the claim, putting in an initial stake at the upper end of the Prospector, putting in a stake between four and five feet long, hewed on four sides. We wrote the location notice on it. I believe it started with the date, and “Know all men by these presents that the undersigned”—this date, whatever it was—and the staking this claim—whatever it was “known as the Prospector Association.” And it came then to the feet of ground, five thousand two hundred and eighty feet downstream to the lower center stake, and then we put on the other side “Six hundred and sixty feet to corner post,” and on the other side “Six hundred and sixty feet to the left limit.” We put eight names on the initial stake, myself, and Chittick’s name, and Tom Davis and Pillar’s. Chittick’s name was C. C. and Pillar’s William. Dikeman and Van Orsdall were also there and Dikeman put on Abe Blackburn. I cannot remember anyone else now.

Q. Did you put anyone by the name of Stanley on there?

A. Yes, there was Stanley. There was one more name on.

Q. A fellow by the name of Morrow?

A. Oh, Morrow, John Morrow, yes.

(Testimony of John Beaton.)

After that, we stepped the claim off to the lower end,—well, we put these corner stakes in first—measured the width of it 660 feet, Dikeman and I. I went to one side and stepped it off, and put in my post, and he stepped off to the other side and put his post down. They were marked “Left limit corner post of the Prospector Association” and we had “660 feet to the center initial stake”; and then “5,280 feet to lower corner stake of Prospector Association.” That is what we wrote on the corner stakes. I put that on the left limit, and on the right limit it said: “Upper corner stake of the Prospector Association, right limit, Otter Creek,” and “660 feet to center initial post.” Then on [82] another side, “5,280 feet to lower corner stake.” We went to these other corner stakes and blazed them, went all round the claim. We started at the upper end. I took one side, and Dikeman took the other, and staked one side. We just started from the initial post, and staked the upper end first, and then blazed along each side, one on each side, and then same at the lower end. We blazed so that a man could follow them and I have followed them. We went then and staked on the lower end. We put “The lower center stake of the Prospector Association” and then put the corner stakes in the same way as we did the upper end. We also wrote on the lower center stakes, “Lower center stake, 660 feet to lower corner stake, left limit” and then it says, “660 feet to the lower corner stake, right limit.” This stake was also about four or five feet, hewed on four corners—four sides. At the corners, we put in about the

(Testimony of John Beaton.)

same kind of stakes. These stakes took in all the ground we claimed. We did not do any more work on the claim until we got it recorded. We got it recorded in June, 1909. We let leases on the ground after we got back to the country again. We let a lease to Tom Davis in October, 1909. Tom Davis was the same Tom Davis, one of the locators. He sunk two holes that I know of, one seventeen feet and one fifteen feet. I panned there. Got some prospects—what we claimed then three cents. I have mined about fifteen years in Atlin, Fairbanks and here, and the Caribou country. From what prospects I saw there, I would be justified as a reasonable prudent man, in spending my time and money, with a reasonable expectation of developing a paying mine. Tom Davis sunk those two holes in January, 1910. I saw other work done there that year by Tom Davis. He tried to sink more holes. I do not think he got down on account of water. He got down from three to seven feet. I saw those holes. There was a party by the name of Olsen, Williams—I believe there was three of them—I don't know the third party, that worked there that same winter—years of 1909 and 1910. They worked until May, 1910, sinking holes. It seems to me they sunk seven or eight. They got holes to bedrock and I saw them, but did not pan there. They were from twelve to twenty feet, I guess. No one else mined there in 1910. In the year 1911, Chitticks worked there. I saw them,—C. C. Chittick and Andy, his brother. They started to turn the creek, and I be-



(Testimony of John Beaton.)

lieve they had a boiler on, and went to bedrock and done some sluicing. [83] They took out some dust, and did quite a few thousand dollars' worth of work, some time in the spring until late in the fall. I do not know if any work was done on that claim in 1912.

On cross-examination, the witness said: Dikeman and I located the ground. I made out the location notice. Dikeman's name was not on the stakes only as a witness. He was not on the notice we made out only as a witness.

Q. And you say you put in some names. What do you mean by that?

A. Well, our way of doing it: we were staking for other people that we know; that was all we were doing at the time—people we thought was worthy of staking something for them; and we were partners, so I took half of my friends, four, and him four of his.

Dikeman and I were partners prospecting. We were not jointly interested in the ground at that time. We were partners and we had no interest in the ground at the time. I put in four names and he put in four. We measured the ground—just stepped it off. I don't know if it was at all accurate or not; I have never measured it. I do not know whether we staked one hundred sixty or one hundred eighty acres, only as near as we could get at it, we were trying to get that an eight-claim association, as near as we could get to it, in the way we had of

(Testimony of John Beaton.)

finding out. Dikeman put in Blackburn and *and* John Morrow. I wrote those names on the location notice at that time. I believe we have it here. I am sure I wrote A. Blackburn, yes. Dikeman also put in Morrow, Van Orsdall and Stanley. I would not be able to tell you Stanley's initials. I could find out.

Q. Did you know those people?

A. I don't know them at all. I never saw any of them at that time. I had never seen Van Orsdall that I know of, to know him. I had been to Ophir Creek before that and I didn't know Blackburn there. Yes, I would know Morrow if I saw him.

Q. You wouldn't know whether these were real people or not then, all except Morrow?

A. No, the names was all I knew of, but I knew the other people very well. I knew C. C. Chittick about three years before that and he was not around when I was there. He was in the Fairbanks country. I knew Tom Davis well [84] for about three years; he was in the Fairbanks country. I knew William Pillars well. I had known him about eight years and was friendly with him. I know Jim Muckler well. I had seen him fourteen or fifteen years ago; known him fairly well in every camp I went to since, and he was the same Jim Muckler that died in Ruby this winter. I wrote those names on a location notice. I will try to explain. I wrote a location notice out, so when we got to Ophir, Dikeman took all the location notices that we wrote out and took them to Gaines Creek where Bill Taylor was, and got the notices made out over. He wrote

(Testimony of John Beaton.)

them over for us in the way we had them, so that the writing would be plainer and better, we thought. So Dikeman came back to Ophir in a couple of days, and I looked the notices over, and thought they were the same as we wrote them; and we sent them notices to the Commissioner then to get them on record—on Ophir. When I speak about writing the names on the notice, I mean the notice on the stake.

Q. You mean you wrote those names on the stake and Dikeman wrote part?

A. Yes. We wrote our location notices ourselves. I don't know whether they are in existence. Taylor copied ours, to make the writing plainer; that's what we did that for. I looked over the ones that Taylor copied and recorded them. I didn't know Stanley before we located, nor don't know him very much yet; don't know if I would know him if I saw him. Mr. Dikeman is supposed to be in Seattle. All I know about these people was they were supposed to be friends of Dikeman.

(Questions by Mr. HILL referring to original location notice.)

Q. Now this shows S. Blackburn, does it not?

A. That is "A"—I thought it was "A."

Q. And W. Stanley?

A. Stanley, yes. And I have A. Blackburn in another place. That shows "S." C. C. Chittick and Andy Chittick worked on this claim in 1911. They had a written lease from the owners that was around there at the time. I don't know how many of them, or who was there; I was there myself, and joined in

(Testimony of John Beaton.)

the lease. If I remember right, it was in 1911, in the spring some time. I can't get down to date with that, because I don't remember, but I think I could find proof of when they got it. I believe that they were around there in May. I don't know that they had started work in May. They dug their ditch, dam and [85] *and* that sort of thing under the lease and they dug that ditch and dam on the Prospector Association for the purpose of working the Prospector. I don't remember whether that was in May, some time in the beginning of—or it might be later—May or June, or some time in the beginning of spring.

Redirect Examination by Mr. RODEN.

I saw Jim Muckler last fall when I was going through Ruby—must have been about the first of October, or the last of September in the year 1913. He is the same Jim Muckler that I staked into the Prospector claim. He was poorly. He looked to me to be very sick, and he told me he was. I believe he was under the physician's care.

Mr. HILL.—We will admit that James Muckler died in Ruby last winter.

Mr. RODEN.—That is all we are trying to show.

Mr. McGINN.—What time?

Mr. HILL.—Couldn't say the exact date. I think it was about—

WITNESS.—About the 12th of March, I believe.

Mr. HILL.—I think it was March, somewhere along there.

(Testimony of John Beaton.)

WITNESS (in Reply to Questions by Mr. RODEN).—In December, 1913, I had no conversation with Mr. Adams, plaintiff in this case, at Otter Creek. I remember when Mr. Adams came up Otter Creek some time in the summer of 1913. I saw him. He didn't offer any of his property for sale to me anyway, or to anyone in my presence that I know of. I first became aware that there was an excess in the Prospector Claim last fall or summer, when this case started. I got knowledge of the fact that there was an excess claim when I got a summons and complaint. Prior to that time I did not know there was any excess of the Prospector Claim. In the summer of 1911, I was on Otter. I was there from the first of June to about the 25th of September. I was again on Otter Creek in 1912 and again in 1913. William Dikeman was not in the Otter Precinct in the year 1911. He was in Otter in 1912. I do not remember when he came into the precinct; he was there before I came. I came in about the 14th—somewheres about the first of September. Dikeman was going out when I was coming in. He was here again in 1913. He got here about the 25th of June on one of the first boats over Lake Lebarge. He stayed here until the fall; I believe he was here when I left. I left here about the ninth of September—or about the tenth of September—between the tenth or fifteenth, anyway. Dikeman was here at that time. [86] During all of the time I have lived on Otter Creek on Discovery; that is where the town of Otter is. My home is there, has always been there



(Testimony of John Beaton.)

while I was in here. When Dikeman has been here, it has been there. He has a home there, a building of his own. I do not know where Stanley was in 1911. I only know now what I hear. I saw him last in 1909. We were coming up the river and he was going down. I know when Tom Davis was here. I heard from him last in Fairbanks last summer. I believe he left here in the fall of 1911, but I am not sure—either that or 1912. I know William Pillars. He left here in 1911. He is in Fairbanks.

Upon cross-examination by Mr. HILL, the witness testified: I remember seeing Adams at Riley's in 1913 some time. I do not know if they were discussing some sale, and I do not remember what they did discuss. I walked into the office and they were in the office, and I didn't stay in there long anyway. I do not know what their talk was about. I was in the same room with the two of them for a short while. I did not know that the Prospector Claim was excessive. I do not know that I ever heard that it might be excessive. I did not hear about Adams being called a claim jumper down at the mouth of Flat, because he staked a fraction on the Prospector, and I never knew Adams at all till last summer and never heard of him until last summer. Last—whatever time I got this summons, this case started in. That was the first I knew anything about it. I often went down to see the ground between 1911 and 1913. I went by the corner of the Mohawk and the Prospector. I do not know if I went to their stakes. I do not think I did go.



(Testimony of John Beaton.)

Q. Did you ever notice any other stakes there, other than those you put there?

A. No—yes. I did not look to see what they were, Someone had put stakes at the corner. I saw some stakes there. I never noticed whether anyone had staked about 125 feet along the line we had blazed out. I never looked along the line for any stakes. I have been cruising back and forth since I have been to the camp. I do not know of any certain time that I followed the line around or anything like that. I never saw any strange stakes down there. Of course stakes didn't surprise me to see anywhere—there was so many of them. It would take a lot of my time to look for stakes and I didn't pay much attention to it. [87]

Q. Did you ever see anyone working on that ground just north—I believe it is—of the Mohawk line, north of the south line of the Prospector?

A. First spring there has been something done; there has been holes put down there, is the only thing I saw done. I have been outside every winter since 1909.

Q. Now, in the spring of 1912, when you went by there, you saw where there had been new holes put down on the Prospector, just a little north of the south line of the Prospector, did you not?

A. I noticed holes put down right along, but I didn't pay attention enough to know. We put them down—there was different people putting holes down. Flat City is on that claim, and I don't know

(Testimony of John Beaton.)

that I could say I saw a tent there—still, I saw lots of tents.

Q. Now, Flat City isn't on the end of the claim that is right up by the Mohawk, is it?

A. Well, it is towards the end.

Q. Now, isn't that end of the claim by the Mohawk away up there by some wood piles, some seven hundred or eight hundred feet from Flat City?

A. I don't know where the line of the Mohawk comes. I know where the southern line of the Prospector is. I believe it joins the Mohawk. It is south of the town of Flat, not very much. I would not say it was at least seven hundred feet.

Q. Would you say it was a thousand feet south?

A. No, sir.

Q. Would you say it is over four hundred?

A. I wouldn't say but what it is. I really wouldn't say just how far it is. I know where I put that stake.

Q. Now, there is quite a vacant space between the town of Flat, or any of the buildings, and the corner of the Prospector?

A. Yes. I never went to read any of the Adams' stakes. Since the commencement of this action, I have seen them. I understood they were Adams' stakes. I believe I did notice them since this action. I was down there, and I don't know if I took any particular notice of them. I know they were there, and I know about what ground is covered by Adams' location. I didn't see a tent inside of that ground that is covered by Adams location in the spring of

(Testimony of John Beaton.)

1913 or the spring of 1912. [88] I never paid any attention to know that I saw a tent there. I don't really know that I did. I did not pay any attention to the shaft.

Q. And the same stakes you recognize as Adams' stakes now, you saw there before this action commenced, didn't you?

A. I never went up to the stakes to look at them; I went by them. I do not think I ever saw the same stakes. I don't think—if I did, I never went up to read what is on, or anything.

Upon redirect examination by Mr. RODEN, the witness testified: I am not conscious of ever having seen any of Adams' stakes.

### **Testimony of J. E. Riley, for Defendants.**

Whereupon J. E. RILEY, a witness called for the defendants, being first duly sworn, upon examination by Mr. RODEN, testified as follows:

My name is J. E. Riley. I am a miner working on Otter Creek. I remember in the summer of 1913, I had a conversation with Mr. Adams, concerning the sale and purchase of some mining claims. That conversation took place on Discovery, down near the cut. Mr. Adams and myself were present. Mr. Beaton was not present. No conversation took place in my office in my house in regard to any ground.

Cross-examination by Mr. HILL.

Q. Was this the same day that you had a conversation with Adams down in the cut, and then did you

(Testimony of J. E. Riley.)

have another conversation with him up in the house?

A. No, in regard to any ground. We talked on the way up from the cut to the house. Mr. Beaton was there transacting some other business.

Upon Redirect Examination by Mr. RODEN, the witness testified as follows: Adams passed my place sometimes. I met him one day and he said he wanted to talk over—He had never been out there any other time talking about his properties.

**Testimony of Charles Kreutzinger, for Plaintiff.**

Thereupon CHARLES KREUTZINGER, a witness called for and in behalf of the plaintiff, being first duly sworn, testified, upon examination by Mr. HILL, as follows:

I have lived in Otter Precinct since the spring of 1910. I know Sam Adams, Cas. Chittick, James Muckler, Star Ballard, William Lang. I was present in 1911, along about the first of April, I should judge, at a conversation between Sam Adams, Cas. Chittick and Jim Muckler, regarding the location of the fraction off the Prospector. Sam Ballard was present and [89] Muckler and Chittick and myself,—and I think a couple of others, but I don't recollect. This conversation took place in the office of the Conley Saloon.

Q. What was that conversation, as nearly as you recollect?

Objected to by Mr. McGinn for the defendants, on the ground that it was incompetent and hearsay and not binding on the defendant in this case. That it is immaterial; it is not evidence of any fact, and

(Testimony of Charles Kreutzinger.)

take a certain part of this claim, that it is within the Statute of Frauds.

Objection overruled.

WITNESS.—Well, it was in regard to staking some excess. I couldn't state word for word because I don't recollect; as I recollect it, is the best I can do. Well, Adams told, as I recollect, that the claim was in excess of 160 acres, and if they had any objection to his staking the excess, and they said "No," as I recollect. I know that both of them agreed to—they were perfectly well willing that if there was over 160 acres, that it should be taken off.

(Mr. McGinn objected to that as a conclusion, and moved that it be stricken.)

COURT.—*I may stand.*

WITNESS.—They said he could stake any place.

Upon cross-examination by Mr. RODEN, witness testified:

I have known Sam Adams since 1910 and have known him ever since. Our relations have been quite friendly. No, I don't think we had business relations together—not to my knowledge.

Q. Well, you and he worked there on that Chicago Bench?

A. No, sir, I had nothing to do with the Chicago Bench whatsoever. I never worked on there. I was up there one afternoon. No, Adams wasn't up there.

Q. That was after Adams had relocated the claim there too, wasn't it?

Mr. HILL.—Objected to as incompetent, irrel-

(Testimony of Charles Kreutzinger.)

evant and immaterial. Objection overruled.

A. I believe it was and that was the time there was trouble up there about jugging Adams. I was up there in the afternoon but I wasn't jugged. I was arrested in Flat the next day for trespassing on that property. I did not live with Adams in the same cabin in Flat. I lived with Drew—Charlie Drew's cabin. Adams did not live in the cabin when I was there. He and I never [90] lived in the same cabin together. I lived in the same cabin he had lived in.

Q. Now, how did you happen to recollect this conversation with Chittick?

A. Well, I was over to Flat and I recollect this conversation. On the first of April, 1911, I was not acquainted with the Prospector Association. I was acquainted with Cas Chittick just to see him. I don't know what he was doing. I just knew who he was. I don't know how. I knew his name was Chittick—possibly that winter. I don't know where he was living at that time. I had seen him on Flat before that occasion. I was out to Flat on the first of every month, and it was during some of the times that I was there that I seen him. I had seen him prior to the trip on the first day of April, if I recollect right. I knew who Jim Muckler is. I knew him just to see him; much the same way I had become acquainted with Chittick. We all did talking on this occasion.

Q. Well, what did you say?

A. I said, "Bring us another one," if I recollect.



(Testimony of Charles Kreutzinger.)

Q. I am asking you what you said about this Prospector claim on that occasion.

A. Well, I have stated all I said at that time. Adams was asking Muckler about the claim. Adams said that the claim was in excess; I wouldn't be sure that he said "excess." He said it was too big, or in excess. I wouldn't be sure. I am quite sure he said it was in excess.

Q. Did he say to them that he had measured the claim?

A. No, not to my recollection. I don't know whether or not I would recollect if he had said it. Both of them answered Adams in this conversation. Muckler said it was all right with him. Chittick said similar. I don't recollect just what it was. Chittick said, to my recollection, that it was all right. I don't recollect whether they were all in the saloon or not, when I came in. I was in there collecting a bill. I had no interest in the matter at that time. This conversation took place at the time in the office, possibly they were all sitting in the office. I am not sure that they were. We all went out together and at one time we were all in the office together. I am positive that this conversation took place in the office. Sam Ballard was there. I don't recollect whether the bartender was in there or not. [91] I don't recollect how long I had been there when Muckler and Chittick came in. I don't recollect who came in first. I recollect the talk about this excess. They talked about this claim being too big—the Prospector Claim. I remember that positively. It was in the

(Testimony of Charles Kreutzinger.)

evening - when they had this conversation. They stayed there an hour, maybe. The conversation was about mining. I don't recollect word for word.

Q. The only thing you can recollect is that you are positive about the excess?     A. Yes.

Q. Nothing else that you can recollect?

A. No, sir, I don't recollect it. I have no interest in this fraction now. There are no business relations existing between me and Adams. I am not a co-owner with him in any ground. I understand C. C. Chittick was lost on the trail a year ago. I didn't know whether Jim Muckler was dead or not. I heard in the courtroom this afternoon he was dead. That is the first time I heard it. I have seen him since that conversation. I seen him the day he went out on the boat. It was 1912 or 1913; I would not be positive. I am positive that this conversation took place on the first of April 1910. The matter never was called to my attention since. I never spoke about this conversation until here this afternoon. I didn't talk it over with Adams. I didn't talk it over with his lawyer.

Q. Never was mentioned at all.

A. No, sir. Adams told me he wanted to use me as a witness. He didn't tell me what he wanted me to testify about. I didn't talk about this until I came here this afternoon. [92]

Thereupon pursuant to stipulation between the plaintiff and defendant, said stipulation is as follows: [Caption and Title.]

**Stipulation Re Deposition of Walter Rowson, for Defendant.**

It is hereby stipulated by and between the plaintiff above named, and Yukon Gold Company, a corporation, John Beaton and W. A. Dikeman, defendants above named that the deposition of Walter Rowson, a witness for the above-named defendants, may be taken before any notary public in and for the Territory of Alaska, and when so taken may be certified by such officer and returned to the office of the Clerk of the District Court, Fourth Judicial Division, Territory of Alaska, and used as testimony at the trial of the above-entitled action by the said defendants, subject to all objections that may be made thereto by the plaintiff.

Iditarod, June 19th, 1915.

E. COKE HILL,

Attorney for Plaintiff.

HENRY RODEN,

Attorney for Defendants, Yukon Gold Company,  
Beaton and Dikeman.

The defendant read the deposition of Walter Rowson, who being first duly sworn, testified as follows:

**Deposition of Walter Rowson, for Defendant.**

My name is Walter Rowson, Fairbanks, Alaska; by profession a court reporter, but at present engaged in mining. During the summer of 1914, I was Official Court Reporter and Judge's Secretary in the District Court for the Fourth Division of Alaska. I have been engaged in court reporting for a period

(Deposition of Walter Rowson.)

of almost eight years; first in the Civil, Criminal and Surrogate Courts at Toronto, Ontario, afterwards in the Superior Court for Chehalis County, Washington, and latterly in the District Court for the Fourth Division of Alaska. I reported and took the stenographic notes of the evidence and testimony given in that certain action entitled "S. C. Adams, Plaintiff, vs. [93] Yukon Gold Company, W. A. Dikeman, John Beaton and others, defendants, No. 152 I, in the District Court, Territory of Alaska, and tried during the summer of 1914 at Iditarod, Alaska, before Hon. Frederic E. Fuller, Judge of the said Court. I have in my possession the notes of the evidence and testimony taken by me in the aforesaid case, and they have heretofore, since the trial of the cause, been in the possession of the District Court at Fairbanks, Alaska. I can find in said notes, the evidence and testimony given by one A. A. Chittick, the said testimony being as follows:

#### SURREBUTTAL.

##### **Testimony of A. A. Chittick, for Defendants (In Surrebuttal).**

A. A. CHITTICK, called for and on behalf of the defendant, being first duly sworn, testified as follows:

My name is A. A. Chittick. My business is mining; I have been in this precinct since 1909. C. C. Chittick was a brother of mine. He was here in 1910; he came here then. He is dead now—he is supposed to be. I saw him last on the twenty-fifth of January, 1913, at Susitna. In the year 1910, C. C.

(Testimony of A. A. Chittick.)

Chittick and I were partners in everything,—in mining, and after his wife was running a roadhouse at the mouth of Otter Creek. C. C. Chittick did no mining on the Prospector Association in the year 1910. He did do prospecting on the Prospector Association in 1911 in September. He went on that claim first about the last week in May. We finished turning the creek and made a dam. I think it was the last week in May. C. C. Chittick did not sink any shafts on the Prospector Association in 1910 nor in 1911. In the fall of 1911, he started a cut to change the bed of the creek. He did some of the work, and had quite a few men. His work consisted of sluicing. He did some work there after January 1st, 1912. I was there with him and sunk five shafts. I was with him in 1911, too, along from about the 8th of July. I know from my own personal knowledge that he didn't sink any shafts on the Prospector Association in the year 1911.

Q. Now, in the year 1911, say in the month of September, did you have any conversation or meeting with C. C. Chittick relative to a conversation supposed to have taken place between him and one L. C. Adams, in which the subject of the location of a fraction of the Prospector claim by Adams came up?

Mr. Hill objected to that unless Adams was present. It is attempting [94] to prove statements to their interest. That is not competent.

The COURT.—Just ask whether or not there was any conversation. That may be answered or not.

(Testimony of A. A. Chittick.)

Mr. RODEN.—Did any such conversation take place?

A. It did, in Flat City, at our house; at our home, C. C. Chittick's and mine. I don't think there was anybody but myself present at the time.

Objection by Mr. Hill as not in any way binding upon plaintiff, and strictly hearsay. It is simply a conversation concerning some other conversation.

Objection sustained. After argument:

COURT.—I think the shortest way is to allow the question to be answered, subject to your objection, Mr. Hill.

A. He said in regard to Adams staking the fraction, that he had met Adams, and he had said that he had staked a fraction off of the Prospector Association; and he said he had met Adams, who had said: "I have staked a fraction on the Prospector Association, so I don't suppose we shall be very good friends now." And my brother said: "I don't see that that will make any difference as to our being good friends. If the Prospector was in excess of 160 acres, I would just as soon see you stake it as anybody else." I should judge this conversation took place in September, 1911.

Q. Now, in reference to this conversation; did your brother say what he had told Adams with reference to casting off on the Prospector, in case there were any?

Mr. Hill objected to that as incompetent and irrelevant, and as not tending to prove or disprove any



(Testimony of A. A. Chittick.)

conversation which C. C. Chittick may have had with Adams.

WITNESS.—(Continuing.) I asked him what he had done about it, and he said he had asked Adams located it between the Prospector and the Mohawk where he had located it, and Adams told him he had Association; and my brother said he didn't think that there would be any fraction exist there, not by his consent; he thought he understood in Fairbanks that the first staker had the right to any where the first fraction should be set off, and not by his consent would it be set off there; that he could have it on the side, or on the lower end, that is if one existed. [95]

Mr. Hill objected to that. Objection sustained.

WITNESS. — (Continuing.) I know James Muckler. I saw him on the Prospector Association during 1910 and 1911, and different times I was there. I had a talk with him about the Prospector, in regard to the claim; and he told me he and Dikeman and somebody else had measured the claim, and it was 13 acres short of 160 acres. That conversation was some time after—

Mr. Hill objected to that; he did not see what the purpose was.

COURT.—Objection overruled.

WITNESS.—(Continuing.) It was after my brother told me about his staking the fraction. I don't think it was over a year.

Upon cross-examination by Mr. HILL, the witness testified as follows:

(Testimony of A. A. Chittick.)

I was here in April, 1911. I lived at the mouth of Otter. I wasn't living at Flat. I might have been there. My home is at the mouth of Otter Creek. My brother might have been there too at that time, but he wasn't doing any work there. He might have been at Flat on or about the first of April, 1911.

Q. As far as you know he was?

A. As far as I know, he wasn't. I couldn't say whether he was or not. [96]

Thereupon it was stipulated as follows:

For the purpose of this suit and for no other purpose it is stipulated between the parties hereto, that is the plaintiff S. C. Adams and defendants Yukon Gold Company, W. A. Dikeman and John Beaton, that on the date of the location of the "Anaconda Fraction" described in the pleadings herein, the following named persons were the owners of the Prospector Association claim mentioned in the pleadings herein, and that their interest in said claim were as set forth after their names, respectively, viz: W. A. Dikeman, 3/16ths; John Duncan, 1/16th; Ira Van Orsdale, 1/16th; P. F. Stimley, 1/16th; Tom Davis, 1/16th; John Beaton 2/16th; James Muckler, 1/8th; Wm. Piller, 1/16th; S. Blackburn, 1/8th; and C. C. Chittick, 1/8th.

That on the date of the location of the "Anaconda No. 2" mentioned in the pleadings herein, and at the commencement of this suit, the following named persons and corporation were the owners of said Prospector Association claim and that their interest therein as set forth after their names, re-

spectively, viz: Yukon Gold Co., 8/16th; W. A. Dikeman, 3/16; John Beaton, 3/16th; Tom Davis, 1/16th; and James Muckler, 1/16th; and that as far as defendants Yukon Gold Co., W. A. Dikeman and John Beaton are concerned they are now the owners of the same interests and further that defendant Yukon Gold Co. upon the filing of this stipulation and the order of the Court, may withdraw the deeds introduced in evidence by said Company upon the trial of this cause establishing its title in said premises as hereinbefore set forth.

E. COKE HILL,

Plaintiff's Attorney.

HENRY RODEN,

Attorney for Defendants, Yukon Gold Company,  
W. A. Dikeman and John Beaton.

Thereupon plaintiff and defendants rested, and the testimony closed.

The service of the foregoing proposed Bill of Exceptions by receipt of copy is hereby acknowledged at Ruby, Alaska, this 20th day of April, 1917.

HENRY RODEN,

Attorney for Defendants.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th. Div. Apr. 20, 1917. J. E. Clark, Clerk. By Thomas J. DeVane, Deputy.

Filed in the District Court, Territory of Alaska, 4th Div. Aug. 27, 1917. J. E. Clark, Clerk. [97]

[Caption and Title.]

**Order Setting Time for Filing and Serving Bill of  
Exceptions.**

Now, on this day, upon stipulation of the respective counsel herein,—

IT IS ORDERED that counsel for plaintiff have six (6) months from the 16th day of August, 1916, in which to prepare, file and serve his Bill of Exceptions herein.

CHARLES E. BUNNELL,  
District Judge. [98]

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[Caption and Title.]

**Stipulation Extending Time to May 1, 1917, to  
Prepare, etc., Bill of Exceptions.**

It is hereby stipulated by and between the plaintiff and defendant acting by their respective counsel, that the plaintiff may have until May the first, 1917, within which to prepare, serve and file his bill of exceptions in said cause, and that the Court hereafter enter an order *nunc pro tunc* extending said time.

Done February 9th, 1917, by telegram.

E. COKE HILL,  
Attorney for Plaintiff.

HENRY RODEN,  
Attorney for Defendants. [99]

Signal Corps, United States Army.

TELEGRAM.

WASHINGTON-ALASKA MILITARY CABLE  
AND TELEGRAPHIC SYSTEM.

SEND THE FOLLOWING MESSAGE:

Fairbanks, Feb. 9, 1917.

Henry Roden,

Juneau, Alaska.

Court and Wolcott both away, will you stipulate  
may have till May first file bill exceptions in Adams  
versus Yukon Gold. Please answer immediately.

E. COKE HILL.

[Indorsement.] [100]

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Signal Corps, United States Army.

WASHINGTON-ALASKA MILITARY CABLE  
AND TELEGRAPH SYSTEM.

TELEGRAM.

19v g 10 night

Received at

Juneau Als Feb 10, 1917,

E. Coke Hill,

Fairbanks.

You may have till May first file bill of exceptions.

RODEN.

306p. [101]

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[Caption and Title.]

**Stipulation Extending Time for Filing of Proposed  
Bill of Exceptions, etc.**

It is hereby stipulated by and between the plain-

tiff and defendants acting by their respective counsel that the defendants may have 30 days from the date of filing plaintiff's proposed bill of exceptions in which to file exceptions and amendments thereto.

Done this 20th day of April, 1917.

E. COKE HILL,  
Attorney for Plaintiff.

HENRY RODEN,  
Attorney for Defendants.

[Indorsement.] [102]

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[Caption and Title.]

**Suggested Amendments to Proposed Bill of  
Exceptions Filed by Plaintiff.**

Come the defendants, Yukon Gold Company, a corporation, John Beaton and W. A. Dikeman, and propose the following amendments to the proposed bill of exceptions filed by the plaintiff herein, to wit:

1st. Amendment suggested: Insert in said proposed bill of exceptions all the testimony given by the plaintiff S. C. Adams, as a witness in his own behalf.

2d. Amendment suggested: Insert in said proposed bill of exceptions the original map of the premises described in the pleadings herein, as used upon the trial of this cause or a duly prepared true copy thereof.

3d. Amendment suggested: Insert in said proposed bill of exceptions all the testimony given by E. A. Austin, a witness for the defendants.

4th. Amendment suggested: Insert in said pro-



posed bill of exceptions all the testimony given by the witness John Beaton, on behalf of defendants.

HENRY RODEN,

Attorney for Defendants Yukon Gold Co. John Beaton and W. A. Dikeman.

[Indorsement.] [103]

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[Caption and Title.]

**Affidavit of Service of Suggested Amendments to  
Proposed Bill of Exceptions.**

United States of America,  
Territory of Alaska,—ss.

Henry Roden, being first duly sworn, on his oath deposes and says: I am a person over the age of twenty-one years; that on the 23d day of April, 1917, at Ruby, Alaska, I served upon E. Coke Hill, Esq. attorney for the above-named plaintiff in the above-entitled cause, a true, correct and complete copy of the “suggested amendments to proposed bill of exceptions filed by plaintiff,” by leaving a true copy thereof at the office of the said E. Coke Hill, in the aforesaid town of Ruby, Alaska, that being the place where the said E. Coke Hill transacts his business.

I do further depose and say that on the 23d day of April, 1917, I left a true correct and *complete* of said “suggested amendments to proposed bill of exceptions filed by plaintiff” at the office of the clerk of the above-entitled court in said town of Ruby, and deposited with said clerk the said copy for and as service upon the said E. Coke Hill, Esq., as attorney for the plaintiff herein, and for his use and benefit.

Deponent further says that he is the attorney for the defendants Yukon Gold Company, John Beaton and W. A. Dikeman, and as such prepared the said "suggested amendments to proposed bill of exceptions filed by plaintiff."

HENRY RODEN. [104]

Subscribed and sworn to before me this 23d day of April, 1917.

[Seal]

JOHN W. DUNN,

Notary Public in and for Alaska.

My commission expires June 22, 1918. [105]

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[Caption and Title.]

**Notice of Hearing of Settlement of Bill of  
Exceptions.**

To E. M. Stanton and Henry Roden, Attorneys for  
the Above-named Defendants:

You and each of you will please take notice that on the 30th day of July, 1917, at the hour of two o'clock [P. M. of said day, or as soon thereafter as counsel can be heard, in the room occupied by the above-entitled court at Ruby, Alaska, plaintiff will call up for settlement its bill of exceptions and any objections thereto that may have been filed.

E. COKE HILL,

Attorney for Plaintiff.

[Indorsement.] [106]

[Caption and Title.]

**Hearing on Defendant's Amendments to Proposed  
Bill of Exceptions.**

Now, on this day, this cause came on for hearing upon the suggested amendments to the plaintiffs proposed Bill of Exceptions; E. Coke Hill appearing as counsel for the plaintiff and Henry Roden appearing as counsel for the defendants, and after argument thereon, the Court being fully and duly advised in the premises,—

IT IS ORDERED that the defendants first suggested amendment be, and is hereby granted; that the second suggested amendment be, and is hereby denied; upon stipulation by counsel, that the original map filed as an exhibit in this cause be included in the transcript on appeal; that the third suggested amendment be, and is hereby granted; that the 4th suggested amendment be, and is hereby denied.

CHARLES E. BUNNELL,  
District Judge. [107]

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[Caption and Title.]

**Order Settling Bill of Exceptions.**

This cause having been brought on regularly for hearing upon the application of the plaintiff for settling and certifying his bill of exceptions lately filed herein and the time for filing said bill of exceptions having been duly extended by an order of this court and stipulation of counsel until and including the

day upon which was filed, and the time for settling same having been extended to include this day, and the defendants having filed their proposed amendments to plaintiff's proposed bill of exceptions and a hearing having been had thereon and an order of Court made allowing certain of the said proposed amendments and refusing to allow others, and the plaintiff's proposed bill of exceptions having been amended to conform to the Court's said order,—

NOW, THEREFORE, on motion of plaintiff's attorney, it is hereby ordered that said proposed bill of exceptions as now amended be settled as the true bill of exceptions in this cause, and the same is hereby certified by the undersigned, the Judge who presided at the trial of this cause, to be the true bill of exceptions in said cause and to contain all the material evidence given at the trial of said cause, and the clerk is hereby directed to file the same as a part of the record in said cause with this certificate.

Done this 27th day of August, 1917, at Ruby, Alaska.

CHARLES E. BUNNELL,

District Judge.

Entered in Court Journal No. 1, page 504. [108]

[Indorsement.] [109]

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[Caption and Title.]

### **Assignment of Error.**

Come now the plaintiff above-named and files the following assignment of errors upon which he will rely his appeal from the decree made by this Honor-

able Court on the 16th day of August, A. D. 1916, in the above-entitled cause :

I.

That the said Court erred in making the following finding of fact contained in the fourth paragraph of the said findings of fact in the above-entitled cause, to wit: "That some of the co-owners in said Prospector claim were well known in the vicinity where said premises are situate and were living in close proximity thereto," for the reason that the said finding is not supported by the evidence.

2.

That the Court erred in making the following finding of fact contained in the sixth paragraph of the findings of fact in the above-entitled cause, to wit: "That as marked upon the ground the said Anaconda Fraction lies wholly within the exterior boundaries of the said Prospector Association Claim, and none of its boundaries cover or adjoin any boundary line of said Prospector Association Claim; and the said Anaconda Fraction is not located either at one end or one side of said Prospector claim," for the reason that said finding is not supported by the evidence, in this, that the evidence shows that the southerly line of the Prospector Association was blazed and that the southerly and easterly lines of the Anaconda Fraction coincided with the southerly and easterly lines of the Prospector as marked upon the ground. [110] And the evidence shows that the plaintiff did locate said Anaconda Fraction off one side or end of the said Prospector Association.

## 3.

That the Court erred in making the following finding of fact contained in the seventh paragraph of said findings of fact in the above-entitled cause, to wit: "That on the 19th day of July, 1913, and while the said Prospector Association claim was a valid subsisting placer mining claim, and while the locators thereof and their grantees, except the locators Huckler and Chittic, had no notice or knowledge of the fact that said Prospector claim contained an area in excess of 160 acres, plaintiff herein entered —," for the reason that said finding is not supported by the evidence in this, that the evidence shows that Yukon Gold Company, a corporation, one of the grantees of the locators of the Prospector Association Claim had notice of the claim of the plaintiff sufficient to charge it with the duty of investigating the area of the Prospector Association, and that said evidence shows that the officers of said corporation or some of them had notice of the excessive area of the said Prospector Association.

## 4.

That the Court erred in making the following finding of fact contained in the seventh paragraph of said findings of fact in the above-entitled cause, to wit: "That the southerly boundary line of said Anaconda Fraction Number Two is not coextensive with the southerly boundary line of said Prospector claim," for the reason that the evidence does not support said finding but shows that the said southerly boundary line of the said Prospector Association was blazed and the southerly boundary line of the Ana-



conda Fraction Number Two coincided with said southerly boundary line of the said Prospector Association.

## 5.

That the Court erred in making the 8th finding of fact, for the reason that it is against the evidence in this that the evidence shows that plaintiff did make the said two locations on and off [111] one end of side of the said Prospector claim as he was requested to do by said Muckler and Chittic.

## 6.

That the Court erred in making the following finding of fact contained in the 13th paragraph of said findings of fact in the above-entitled cause, to wit: "That the locators and their grantees of said Prospector Association Claim except said Muckler and Chittic did not acquire notice of the fact that said claim contained an area in excess of 160 acres until after the commencement of this action," for the reason that the said findings is against the evidence in this, that the Yukon Gold Company one of the grantees of the locators of the said Prospector's Association did acquire notice of the fact that said claim contained an area in excess of 160 acres before the commencement of this action.

## 7.

That the Court erred in making the following conclusions of law, to wit, conclusions contained in paragraphs numbered 1st, 2d and 3d, wherein the Court finds that the "Pretended location of said Anaconda Fraction and said Anaconda Fraction No. 2 were and are null and void," and wherein the

Court finds that the defendants herein were and they now are the owners in fee of the premises described in their answer, to wit, the Prospector Association Claim as the said claim is now marked upon the ground and described in the amended location notice thereof, and that said defendants then had and they now have and they were then and they now are entitled to the sole and exclusive possession of the said premises, and that the plaintiff had not at the time of the commencement of this action and has not now any right, title or interest therein or in or to any part thereof, nor the right to the possession thereof or any part thereof; and wherein the Court finds the defendants Yukon Gold Company, W. A. Dikeman and John Beaton are entitled to the relief prayed for in their answer, for the reason that said conclusions [112] of law are against the law and the facts.

## 8.

That the Court erred in dismissing said suit and entering a final decree in favor of the defendant, Yukon Gold Company, W. A. Dikeman and John Beaton for their costs and disbursements against said plaintiff.

## 9.

That the Court erred in not making and entering its findings of fact, finding that the locators of the Prospector Association Claim or their grantees had notice of the excess area contained within the exterior boundaries of said association and failed to cast off such excess within a reasonable time after said notice.

## 10.

That the Court erred in not finding as a fact that the plaintiff did locate a portion of the excess area of the said Prospector Association in accordance with the request and consent of the said Muckler and Chittie off the southerly side of the said Prospector Association.

## 11.

That the Court erred in not finding as a conclusion of law from the facts proven and found that the consent of Muckler and Chittie that the plaintiff might locate any excess area contained within the boundaries of the Prospector Association Claim off any side or end that he wished was binding upon the covenants of the said Muckler and Chittie in the said Prospector Association, and that the said location by plaintiff of the said Anaconda Fraction and the said Anaconda No. 2 Fraction was a good, valid subsisting location thereof, and that the said plaintiff was, at the time of the commencement of said action, the owner of the ground contained in said locations and entitled to the possession thereof. [113]

## 12.

That the Court erred in not making and entering a decree in favor of the said plaintiff, S. C. Adams, and against the said defendants, Yukon Gold Company, W. A. Dikeman and John Beaton, adjudging the plaintiff to be the owner of and entitled to the possession of the said Anaconda Fraction and the said Anaconda Fraction No. 2, in accordance with the prayer of plaintiff's complaint.

WHEREFORE plaintiff prays that the said decree be reversed and the District Court for the Territory of Alaska, Fourth Division, be instructed to enter such a decree as is prayed for in his complaint.

E. COKE HILL,  
Attorney for Plaintiff.

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Aug. 15, 1917. J. E. Clark, Clerk. [114]

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[Caption and Title.]

**Petition for Appeal.**

To the Honorable CHARLES E. BUNNELL, Judge  
of the District Court for the Territory of  
Alaska, Fourth Judicial Division:

The above-named plaintiff, S. C. Adams, feeling himself aggrieved by the decree made and entered in this cause on the 6th day of August, A. D. 1916, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, State of California.

And your petitioner further prays that the proper order touching the security to be required of him

to perfect his appeal be made.

E. COKE HILL,  
Attorney for Plaintiff.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of Five Hundred Dollars.

Dated at Ruby, Alaska, this 15th day of August, 1917.

CHARLES E. BUNNELL.  
District Judge. [115]

[Indorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Aug. 15, 1917. J. E. Clark, Clerk. [116]

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[Caption and Title.]

**Bond on Appeal.**

Know All Men by These Presents: That we, S. C. Adams, as principal, and Arnulf Haarvei and H. W. McCray, as sureties, acknowledge ourselves to be jointly indebted to the Yukon Gold Company, a corporation, W. A. Dikeman, John Beaton, Thos. P. Aitken, Rae B. Carter, P. F. Stimley and Tom Davis, appellees in the above-entitled cause, in the sum of Five Hundred (\$500.00) Dollars, conditioned that, whereas, on the 16th day of August, A. D. 1916, in the District Court of the United States for the Territory of Alaska, Fourth Judicial Division, in a suit depending in that court, wherein S. C. Adams was plaintiff, and the Yukon Gold Company, a corporation, W. A. Dikeman, John Beaton, Thos. P. Aitken, Rae B. Carter, P. F. Stimley and Tom

Davis, were defendants, numbered on the docket of said court as 32-R., a decree was rendered against the said S. C. Adams, and the said S. C. Adams having obtained an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and filed a copy thereof in the office of the clerk of the court to reverse the said decree, and a citation directed to the said Yukon Gold Company, a corporation, John Beaton, Thos. P. Aitken, Rae B. Carter, P. F. Stimley and Tom Davis, citing and admonishing [117] them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, in the State of California, on the 1st day of November A. D. 1917, next.

NOW, if the said S. C. Adams shall prosecute his appeal to effect and answer all costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

Dated this 15th day of August, 1917.

S. C. ADAMS,

Per E. C. HILL,

ARNULF HAARVEI,

H. W. McCRAY,

Sureties.

Approved August 15th, 1917.

CHARLES E. BUNNELL,

District Judge.

[Indorsement.] [118]



**Certificate of Clerk U. S. District Court to  
Transcript of Record.**

United States of America,  
Territory of Alaska,  
Fourth Division,—ss.

I, J. E. Clark, Clerk of the District Court for the Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of 121 pages, numbered from 1 to 121, inclusive, constitute a full, true and correct transcript of the record on appeal in cause No. 32-R, S. C. Adams, Plaintiff and Appellant, vs. Yukon Gold Company, a corporation, W. A. Dikeman, John Beaton, Thos. P. Aitken, Rae B. Carter, P. F. Stimley and Tom Davis, Defendants and Appellees, and was made pursuant to and in accordance with the praecipe of the appellants filed in this action, and made a part of this transcript, and by virtue of the Citation issued in said cause, and is the return thereof in accordance therewith, and I certify that the Citation, annexed hereto, is the original thereof; and I do further certify that the index consisting of pages i to ii, is a correct index of said transcript on appeal; also that the cost of preparing said transcript and this certificate, amounting to forty-six and 10/100 dollars (\$46.10), has been paid to me by counsel for appellants in this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this court this 24th

day of September, A. D. 1917.

[Seal]

J. E. CLARK,

Clerk of District Court, Territory of Alaska, Fourth  
Division. [119]

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[Caption and Title.]

**Citation on Appeal.**

The United States of America, to the Yukon Gold Company, a Corporation, W. A. Dikeman, John Beaton, Thos. P. Aitken, Rae B. Carter, P. F. Stimley and Tom Davis, Defendants, Greeting:

You and each of you are hereby notified that in a certain case in equity in the United States District Court, for the Territory of Alaska, Fourth Judicial Division, wherein S. C. Adams is plaintiff and the Yukon Gold Company a corporation, W. A. Dikeman, John Beaton, Thos. P. Aitken, Rae B. Carter, P. F. Stimley and Tom Davis are defendants, and appeal has been allowed the plaintiff therein to the United States Circuit Court of Appeals for the Ninth Circuit.

You are hereby cited and admonished to be and appear before the said court at San Francisco, State of California, seventy-five days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.  
[120]

WITNESS the Honorable CHARLES E. BUNNELL, Judge of the United States District Court

for the Territory of Alaska, Fourth Judicial Division.

Dated this 15th day of August, 1917.

CHARLES BUNNELL,

District Judge.

Service of above citation by receipt of a true copy thereof is hereby admitted this 15th day of August, 1917.

HENRY RODEN,

Attorney for Defendants.

[Indorsement.] [121]

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[Endorsed]: No. 3058. United States Circuit Court of Appeals for the Ninth Circuit. S. C. Adams, Appellant, vs. Yukon Gold Company, a Corporation, W. A. Dikeman, John Beaton, Thomas P. Aitken, Rae B. Carter, P. F. Stimley and Tom Davis, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Fourth Division.

Filed October 9, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

